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Contents

Federal Register

Vol. 61, No. 186

Tuesday, September 24, 1996

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register
Vol. 61, No. 186
Tuesday, September 24, 1996

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO–370–A5; FV93–930–3]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Order Regulating Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a Federal marketing agreement and order which regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The order was favored by the required two-thirds majority of producers voting in a referendum and was also favored by processors who processed more than 50 percent of the commodity as required by the Agricultural Marketing Agreement Act of 1937. In addition, the marketing agreement was executed by the required number of handlers, that is, handlers who handled more than 50 percent of the tart cherries handled during the representative period. The marketing agreement and order authorize volume, grade, size, and maturity regulations and mandatory inspection. It also authorizes production, processing, and marketing research and promotion projects, including paid advertising. The objective of the order is to improve producer returns by strengthening consumer demand through volume control and quality assurance mechanisms. Agreement and order activities will be financed by assessments levied on tart cherry handlers. The order was considered at several public hearings conducted in 1993, 1994, and 1995. The referendum was conducted by the Department of Agriculture by mail ballot June 12 through July 10, 1996.

EFFECTIVE DATE: September 25, 1996.

FOR FURTHER INFORMATION CONTACT:

(1) R. Charles Martin or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2861, FAX: (202) 720–5698.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326–2724, FAX: (503) 326–7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing, issued on November 30, 1993, and published in the Federal Register on November 30, and amended on December 23, 1993, and January 31, 1994 [58 FR 63108, 58 FR 68065, and 59 FR 4259, respectively]. The notice reopening the hearing was issued on December 5, 1994, and published in the Federal Register on December 8, 1994 [59 FR 63273]; Recommended Decision and Opportunity to File Written Exceptions to the Proposed Marketing Agreement and Order, issued November 20, 1995, and published in the Federal Register on November 29, 1995 (60 FR 61292). The reopening of the comment period to file written exceptions to the proposed marketing agreement and order was issued on December 27, 1995, and published in the Federal Register on January 2, 1996 (61 FR 21). The Secretary's Decision was issued on May 22, 1996 and published in the Federal Register on May 29, 1996 (61 FR 26956).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

The proposed marketing agreement and order was formulated on the record of a public hearing held December 15–17, 1993, in Grand Rapids, Michigan; January 13, 1994, in Provo, Utah; February 15–17, 1994, in Portland, Oregon; January 12–13, 1995, in Portland, Oregon; and January 18–19, 1995, in Grand Rapids, Michigan. These multiple hearing sessions were held to consider a proposed marketing agreement and order regulating the handling of tart cherries grown in the proposed production area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). Approximately 40 witnesses, including tart cherry growers, handlers, and economists, testified in support of the order. Growers and handlers mainly from the States of Oregon and Washington testified in opposition to the proposed order and asked to have Oregon and

Washington excluded from the proposed production area.

At the conclusion of the February 1994 hearing in Oregon, the deadline for filing post-hearing briefs was set at April 29, 1994. The deadline for filing post-hearing briefs was subsequently extended to May 31, 1994. However, based on a review of the hearing evidence and post hearing briefs, the Department of Agriculture (USDA) determined that the hearing should be reopened to clarify certain aspects of the proposal. USDA wanted to obtain additional information and clarification concerning: (1) The States that should be regulated under the order; (2) the economic impact of the proposed order on small and large businesses; (3) whether the expected program benefits would exceed costs, especially for growers, handlers and consumers; and (4) how certain provisions would be implemented under the proposed marketing order. The hearing was reopened and held January 12–13, 1995, in Portland, Oregon, and January 18–19, 1995 in Grand Rapids, Michigan. At the conclusion of the Michigan hearing, the deadline for filing post-hearing briefs was set at March 17, 1995. Ten briefs were filed following the first briefing period and seven briefs were filed following the second briefing period.

The proponents testified that severely fluctuating tart cherry prices are inherently harmful to growers and consumers. It was their view that the proposed marketing order would improve grower returns by strengthening consumer demand through volume control and quality assurance mechanisms.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 29, 1995, filed with the Hearing Clerk, U. S. Department of Agriculture, a recommended decision with the opportunity for written exceptions by December 29, 1995. Subsequently, the USDA received three requests to provide more time to analyze the recommended decision and prepare and file written comments. Based on these requests the USDA reopened the comment period until January 16, 1996.

Upon the basis of evidence introduced at the hearing and the record thereof, the Deputy Assistant Secretary, Marketing and Regulatory Programs, on May 22, 1996, filed with the Hearing Clerk, U. S. Department of Agriculture, a Secretary's Decision and Referendum Order, directing that a referendum be conducted during the period June 12 through July 10, 1996, among producers and processors of tart cherries to determine whether they favored issuance of the proposed marketing order. In the referendum, the marketing order was favored by more than two-thirds of the producers voting in the referendum and also by producers of more than two-thirds of the production represented in the referendum. The marketing order was also favored by processors who processed 79.3 percent of the total volume of processed tart cherries during the representative period. The marketing agreement was signed by handlers who, during the representative period, handled 71 percent of the volume of tart cherries handled during the representative period. The referendum results and handler sign-up met the statutory requirements on producer, processor and handler approval necessary to issue the marketing order and agreement.

The terms of the order set forth in this document are the same as those contained in the Secretary's Decision and Referendum Order, with one exception. This document corrects an error that appeared in section 930.20(c) pertaining to the definition of District 2, Central Michigan. That definition is revised to read that District 2 consists of that area north of a line drawn along the northern boundary of Allegan County, rather than north of a line drawn along the southern boundary of Allegan County.

Small Business Consideration: In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service considered the economic impact of this action on small entities. The record indicates that there are approximately 75 handlers of tart cherries in the production area and 1,600 producers. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of the handlers and producers of tart cherries may be classified as small entities.

For practical purposes, there is no fresh market for tart cherries. Processors dry, freeze, can, juice, or puree pitted tart cherries. Market use averages are: 56 percent of the product becomes industrial grade frozen cherries; 16 percent goes into consumer-size cans of pie filling; 8 percent is used for commercial pie filling; 10 percent becomes juice concentrate; 2 percent is dried; and 8 percent goes into water packs.

Since 1971, there has been a marked transformation in the processing industry's structure. Currently, 75 percent of the crop is processed by farmer-owned cooperatives or grower-owned processing facilities; whereas in 1971, a substantial volume was processed by independent handlers. Processors, through their sales agents, market in all U.S. markets and export to Europe and Asia. There are no discrete regional markets where cherries from a particular district could have a particular advantage, beyond nominal differences in transportation costs, which can often be overcome by price discounting.

The record evidence shows that economic adversity has caused more than 21 percent of Michigan's growers to withdraw from tart cherry farming. There were 1,183 Michigan commercial growers in 1986, compared to 933 in 1992. In 1992, Michigan growers had an average production of 238,000 pounds with 19 percent of those growers averaging 800,000 pounds, accounting for 66 percent of the total Michigan production. In States other than Michigan, there has also been a general decline in the number of commercial growers since 1986. There are fewer growers in other States besides Michigan, but the number of bearing acres has increased from 45,000 acres in 1986, to more than 50,000 acres in 1990.

Record evidence indicates that the demand for red tart cherries is inelastic at high and low levels of production, and relatively elastic in the middle range. At the extremes, during times of very low and very high production, different factors become operational. In very short crop years, such as 1991, there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand sales beyond about 275 million pounds of raw fruit in a single year.

Since 1982, annual sales have averaged 230 million pounds. Under the order, total returns to growers could be increased by restricting supplies of red tart cherries available for sale by handlers during large crop years. Also, production characteristics of the tart cherry industry provide an opportunity to increase growers' total earnings by converting the excess production of large crop years into storable products that could constitute reserve pools. These pools would be liquidated in a year when the available supplies are short.

One of the main concerns addressed in the order is the short term annual variation in supply which is attributable to climatic factors that neither growers

nor processors can control, and which leads to chaotic marketing conditions. Such climatic factors can result in highly unpredictable annual crop sizes, causing gluts and shortages of tart cherries. When gluts occur, large carryin inventories can decrease processor and grower prices, regardless of the anticipated size of the oncoming year's crop. Many sales are consummated with large buyers well before the current crop year's supply and demand situation is clear (based on what can best be described as ''Anticipated Supply'', i.e., the sum of the carryin inventory and USDA crop forecast, available usually late in June, weeks before the actual crop harvest.)

These large, unrestricted carryin inventories and crop estimates can play a dominant role in setting the tone of the market in a given year. The order is intended to lessen the impact of these inventories and estimates by establishing an ''optimum supply,'' thereby reducing price swings to growers and buyers, and ultimately resulting in a stabilization and enhancement of the market.

The order would impose some reporting and record keeping requirements on handlers. Handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible since most of the information that would be reported to the Board is already compiled by handlers for other uses and is readily available. Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour. It is reasonable to expect that a comparable burden would be imposed under this marketing order on the estimated 75 handlers of tart cherries. With respect to growers, they testified at the hearing that information required to be submitted to the Board for grower diversion is already collected and available from growers.

The purpose of the RFA is to fit regulatory and informational requirements to the size and scale of the business entities in a manner that is consistent with the objectives of the rule and applicable statutes. The marketing order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. As discussed in the RFA, Congress' intent, among other objectives, was to direct agencies to identify the need for any ''special accommodation'' (e.g., exemption or relaxation) on regulated small entities (i.e., handlers) because, in the past, some Federal regulatory and reporting requirements imposed unnecessary and disproportionately burdensome demands on small businesses. After reviewing the record AMS determined that direct or indirect costs imposed under the marketing order regulation would not be proportionately greater on small handlers than on large handlers, or conversely, that any projected order benefits would not be proportionately smaller for small handlers than for large handlers.

The record evidence indicates that the order may impose some additional costs and requirements on handlers, but those costs are insignificant and are directly proportional to the sizes of the regulated handlers. The evidence also indicates that, given the severe economic conditions and unstable markets facing the majority of the industry, the benefits to small (as well as large) handlers are likely to be greater than would accrue under the alternatives to the order herein, namely no marketing order, or an order without the combination of volume controls and other order authorities. USDA has made extensive efforts to notify, and include the input of, small entities and others in the development phase and subsequent formal rulemaking proceeding. All handlers, growers, and other interested persons were given an opportunity to participate in this proceeding and submit testimony, not once, but twice since the hearing was reopened to take additional evidence. In addition, USDA mailed to all known growers and handlers notification of the hearing dates and locations. Any regulations issued under the order which would regulate the handling of tart cherries, and which would impose volume, quality or other requirements on handlers, would not occur without additional rulemaking. Such requirements would have to be published in the Federal Register, giving all interested persons full opportunity to participate in the rulemaking proceeding. Any proposal would have to include economic and other considerations under rulemaking procedures.

The record evidence indicates that the order would be instrumental in providing expanding markets and sales, and raising and stabilizing prices of tart cherries, primarily for the benefit of producers. The evidence also indicates that handlers would benefit as well. While the level of such benefits to handlers is difficult to quantify, it is also clear the provisions of the order are designed to benefit small entities. Small handlers and producers are more likely to be minimally capitalized than large entities, and are less likely to survive without the stability the order would provide.

Accordingly, based on the information discussed above, AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements that may be imposed by this order have been approved by OMB and assigned OMB Number 0581–0177. Any requirements imposed will be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased recordkeeping will not be significant when compared to those anticipated benefits.

Findings and Determinations

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order, regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Upon the basis of the evidence introduced at the hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulates the handling of tart cherries grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area will not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of tart cherries grown in the production area

which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make this order effective not later than September 25, 1996.

A later effective date would unnecessarily delay the implementation of the agreement and order and the collection of handler assessments necessary to fund day-to-day program expenses and authorized research and promotion activities. The Department and industry implementation activities must begin promptly. These activities include, but are not limited to, the nomination of members and alternate members of the administrative board to locally administer the marketing order, the selection of that board by the Secretary of Agriculture, and following that, holding board meetings to select a management team, draft board operating guidelines, consider a budget and assessment rate for the 1997 fiscal period, and make other recommendations consistent with order authority. Some of the board recommendations will require rulemaking by the Department to be implemented.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective September 25, 1996, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The ''Marketing Agreement Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin'' upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping tart cherries covered by the order) who during the period July 1, 1995, through May 31, 1996, handled not less than 50 percent of the volume of such tart cherries covered by this order, and

(2) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period July 1, 1995, through May 31, 1996 (which has been deemed to be a representative period), have been engaged within the tart cherry production area in the production of tart cherries for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

Order Relative to Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin

It is therefore ordered, that on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the marketing order include §§ 930.1 through 930.91. The marketing agreement includes the provisions of the order and three additional provisions, § 930.97 Counterparts, § 930.98 Additional parties, and § 930.99 Order with marketing agreement. These provisions are not published herein as part of the order.

The provisions of the marketing order are set forth in full herein.

Title 7, Chapter IX is amended by adding part 930 to read as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Subpart—Order Regulating Handling

Definitions

Sec.

Administrative Body

Expenses and Assessments

Quality Control

Research, Market Development and Promotion

Regulations

Reports and Records

Miscellaneous Provisions

Authority: 7 U.S.C. 601–674

Subpart—Order Regulating Handling

Definitions

§ 930.1 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 68 Stat. 906, 1047; 7 U.S.C. 601 *et seq.*).

§ 930.2 Board.

Board means the Cherry Industry Administrative Board established pursuant to § 930.20.

§ 930.3 Cherries.

Cherries means all tart/sour cherry varieties grown in the production area classified botanically as *Prunus cerasas*, or hybrids of *Prunus cerasas* by *Prunus avium*, or *Prunus cerasas* by *Prunus fruticosa*.

§ 930.4 Crop year.

Crop year means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish.

§ 930.5 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

§ 930.6 District.

District means one of the subdivisions of the production area described in § 930.20(c), or such other subdivisions as may be established pursuant to § 930.21, or any subdivision added pursuant to § 930.52.

§ 930.7 Fiscal period.

Fiscal period is synonymous with fiscal year and means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish: *Provided*, that the initial fiscal period shall begin on the effective date of this part.

§ 930.8 Free market tonnage percentage cherries.

Free market tonnage percentage cherries means that proportion of cherries handled in a crop year which are free to be marketed in normal commercial outlets in that crop year under any volume regulation established pursuant to § 930.50 or § 930.51 and, in the absence of a restricted percentage being established for a crop year pursuant to § 930.50 or § 930.51, means all cherries received by handlers in that crop year.

§ 930.9 Grower.

Grower is synonymous with *producer* and means any person who produces cherries to be marketed in canned, frozen, or other processed form and who has a proprietary interest therein: Provided that, the term *grower* shall not include a person who produces cherries to be marketed exclusively for the fresh market in an unpitted condition.

§ 930.10 Handle.

Handle means the process to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product, or divert cherries pursuant to § 930.59 or obtain grower diversion certificates issued pursuant to § 930.58, or otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof: *Provided*, That the term *handle* shall not include:

(a) The brining, canning, concentrating, freezing, dehydration, pitting, pressing or the converting, in any other way, of cherries into a processed product for home use and not for resale.

(b) The transportation within the production area of cherries from the orchard where grown to a processing facility located within such area for preparation for market.

(c) The delivery of such cherries to such processing facility for such preparation.

(d) The sale or transportation of cherries by a grower to a handler of record within the production area.

(e) The sale of cherries in the fresh market in an unpitted condition.

§ 930.11 Handler.

Handler means any person who first handles cherries or causes cherries to be handled for his or her own account.

§ 930.12 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 930.13 Primary inventory reserve.

Primary inventory reserve means that portion of handled cherries that are placed into handlers' inventories in accordance with any restricted percentage established pursuant to § 930.50 or § 930.51.

§ 930.14 Production area.

Production area means the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin.

§ 930.15 Restricted percentage cherries.

Restricted percentage cherries means that proportion of cherries handled in a crop year which must be either placed into handlers' inventories in accordance with § 930.55 or § 930.57 or otherwise diverted in accordance with § 930.59 and thereby withheld from marketing in normal commercial outlets under any volume regulation established pursuant to § 930.50 or § 930.51.

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers or growers.

§ 930.17 Secondary inventory reserve.

Secondary inventory reserve means any portion of handled cherries voluntarily placed into inventory by a handler under § 930.57.

§ 930.18 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

Administrative Body

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board (Board) consisting of 18 members. Seventeen of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. The remaining member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be as follows:

District	Grower members	Handler members
1	2	2
2	1	2
3	1	1
4	1	1
5	1	or 1
6	1	or 1
7	1	1
8	1	or 1
9	1	or 1

(c) Upon the adoption of this part, the production area shall be divided into the following described subdivisions for purposes of this section:

District 1—Northern Michigan: that portion of the State of Michigan which

is north of a line drawn along the northern boundary of Mason County and extended east to Lake Huron.

District 2—Central Michigan: that portion of the State of Michigan which is south of District 1 and north of a line drawn along the northern boundary of Allegan County and extended east to Lake St. Clair.

District 3—Southern Michigan: That portion of the State of Michigan not included in Districts 1 and 2.

District 4—The State of New York.

District 5—The State of Oregon.

District 6—The State of Pennsylvania.

District 7—The State of Utah.

District 8—The State of Washington.

District 9—The State of Wisconsin.

(d) The ratio of grower to handler representation in District 2 shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from Districts 5, 6, 8 and 9 may be either grower or handler members and will be nominated and elected as outlined in § 930.23. If District 5, 6, 8, and/or 9 becomes subject to volume regulation under §§ 930.52(a), then the Board shall be reestablished by the Secretary to provide such District(s) with at least one grower and one handler seat on the Board and such seats shall be filled according to the provisions of § 930.23.

(f) In order to achieve a fair and balanced representation on the Board, and to prevent any one sales constituency from gaining control of the Board, not more than one board member may be from, or affiliated with, a single sales constituency in those districts having more than one seat on the Board. There is, however, no prohibition on the number of Board members from differing districts that may be elected from a single sales constituency which may have operations in more than one district. However, as provided in § 930.23, a handler or grower may only nominate Board members and vote in one district.

(g) Subject to the approval of the Secretary, the Board shall at its first meeting and annually thereafter elect from among any of its members a chairperson and a vice-chairperson and may elect other appropriate officers.

§ 930.21 Reestablishment.

Districts, subdivisions of districts, and the distribution of representation among growers and handlers within a respective district or subdivision thereof, or among the subdivision of districts, may be reestablished by the Secretary, subject to the provisions of § 930.23, based upon recommendations by the Board. In recommending any such changes, the Board shall consider:

(a) the relative importance of producing areas;

(b) relative production;

(c) the geographic locations of producing areas as they would affect the efficiency of administration of this part;

(d) shifts in cherry production within the districts and the production area;

(e) changes in the proportion and role of growers and handlers within the districts; and (f) other relevant factors.

§ 930.22 Term of office.

The term of office of each member and alternate member of the Board shall be for three fiscal years: Provided that, of the nine initial members and alternates from the combination of Districts 1, 2 and 3, one-third of such initial members and alternates shall serve only one fiscal year, one-third of such members and alternates shall serve only two fiscal years, one-third of such members and alternates shall serve three fiscal years; and one-half of the initial members and alternates from Districts 4 and 7 shall serve only one fiscal year, and one-half of such initial members and alternates shall serve two fiscal years (determination of which of the initial members and their alternates shall serve for 1 fiscal year, 2 fiscal years, or 3 fiscal years, in both instances, shall be by lot). Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified until their respective successors are selected, have qualified and are appointed. The consecutive terms of office of grower, handler and public members and alternate members shall be limited to two 3-year terms, excluding any initial term lasting less than 3 years. The term of office of a member and alternate member for the same seat shall be the same. If this part becomes effective on a date such that the initial fiscal period is less than six months in duration, then the tolling of time for purposes of this subsection shall not begin until the beginning of the first 12-month fiscal period.

§ 930.23 Nomination and election.

(a) *Forms and ballots.* Nomination and election of initial and successor members and alternate members of the Board shall be conducted through petition forms and election ballots distributed to all eligible growers and handlers via the U.S. Postal Service or other means, as determined by the Secretary. Similar petition forms and election ballots shall be used for both members and alternate members and any requirements for election of a member shall apply to the election of an alternate.

(b) *Nomination:*

(1) In order for the name of a grower nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which, except in District 8, contains at least five signatures of growers, other than the nominee, from the nominee's district who are eligible to vote in the referendum. Grower petition forms in District 8 must be signed by only two growers, other than the nominee, from the nominee's district.

(2) In order for the name of a handler nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which contains the signature of at least one handler, other than the nominee, from the nominee's district who is eligible to vote in the referendum. The requirement that the petition form be signed by a handler other than the nominee shall not apply in any District where less than two handlers are eligible to vote.

(3) Only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the submission of nominees in more than one district during any fiscal period. If a grower produces cherries in more than one district, that grower may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A grower may not participate in the nomination process in one district and the election process in a second district in the same election cycle.

(4) Only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any fiscal period. If a handler handles cherries in more than one district, that handler may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A handler may not participate in the nominations process in one district and the elections process

in a second district in the same election cycle. If a person is a grower and a grower-handler only because some or all of his or her cherries were custom packed, but he or she does not own or lease and operate a processing facility, such person may vote only as a grower.

(5) In Districts 5, 6, 8 and 9, both growers and handlers may be nominated for the district's Board seat. Grower and handler nominations must follow the petition procedures outlined in paragraphs (b)(1) and (b)(2) of this section.

(6) All eligible growers and handlers in all districts may submit the names of the nominees for the public member and alternate public member of the Board.

(7) After the appointment of the initial Board, the Secretary or the Board shall announce at least 180 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in this section. Nominations for such position should be submitted to the Secretary or the Board not less than 120 days prior to the expiration of such term.

(c) *Election:*

(1) After receiving nominations, the Secretary or the Board shall distribute ballots via the U.S. Postal Service or other means, as determined by the Secretary, to all eligible growers and handlers containing the names of the nominees by district for the respective seats on the Board, excluding the public voting member seat. The ballots will clearly indicate that growers and handlers may only rank or otherwise vote for nominees in their own district.

(2) Except as provided in paragraph (c)(4) of this section, only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the election of grower members and alternate grower members of the Board. No grower shall participate in the election of Board members in more than one district during any fiscal period. If a grower produces cherries in more than one district, the grower must vote in the same district in which he or she chose to participate in the nominations process under paragraph (b)(3) of this section. However, if the grower did not participate in the nominations process, he or she may select in which district he or she wishes to vote and shall notify the Secretary or the Board of such selection.

(3) Except as provided in paragraph (c)(4) of this section, only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the election of handler members and alternate handler members of the Board. No handler shall participate in the election of Board members in more than one district during any fiscal period. If a handler does handle cherries in more than one district, he or she must vote in the same district in which the handler elected to participate in the nominations process under paragraph (b)(4) of this section. However, if a handler did not participate in the nominations process, that handler may select in which district he or she chooses to vote and shall notify the Secretary or the Board of such selection. If a person is a grower and a grower-handler only because some or all of his or her cherries were custom packed, but he or she does not own or lease and operate a processing facility, such person may vote only as a grower.

(4) In Districts 5, 6, 8 and 9, growers and handlers may vote for either the grower or handler nominee(s) for the single seat allocated to those districts.

(d) The members of the Board appointed by the Secretary pursuant to § 930.24 shall, at the first meeting and whenever necessary thereafter, by at least a two-thirds vote of the entire Board, select individuals to serve as the public member and alternate public member of the Board from the list of nominees received from growers and handlers pursuant to paragraph (b) of this section or from other persons nominated by the Board. The persons selected shall be subject to appointment by the Secretary under § 930.24.

(e) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.24 Appointment.

The selection of nominees made pursuant to elections conducted under § 930.23(c) shall be submitted to the Secretary in a format which indicates the nominees by district, with the nominee receiving the highest number of votes at the top and the number of votes received being clearly indicated. The Secretary shall appoint from those nominees or from other qualified individuals, the grower and handler members of the Board and an alternate for each such member on the basis of the representation provided for in § 930.20 or as provided for in any reapportionment or reestablishment undertaken pursuant to § 930.21. The public member and alternate public member are nominated by the Board pursuant to § 930.23(d) and shall also be subject to appointment by the Secretary. The Secretary shall appoint from nominees by the Board or from other qualified individuals the public member and the alternate public member.

§ 930.25 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 930.23, the Secretary may, without regard to nominations, select the members and alternate members of the Board on the basis of the representation provided for in § 930.20 or as provided for in any reapportionment or reestablishment undertaken pursuant to § 930.21.

§ 930.26 Acceptance.

Each person to be appointed by the Secretary as a member or as an alternate member of the Board shall, prior to such appointment, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 930.27 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be appointed by the Secretary from the most recent list of nominations for the Board made by growers and handlers, from nominations made by the Board, or from other qualified individuals. Any nominations made by the Board to fill a vacancy must be received by the Secretary within 90 days of the effective date of the vacancy. Board members wishing to resign from the Board must do so in writing to the Secretary.

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is appointed and has qualified.

§ 930.29 Eligibility for membership on Cherry Industry Administrative Board.

(a) Each grower member and each grower alternate member of the Board shall be a grower, or an officer or employee of a grower, in the district for which nominated or appointed.

(b) Each handler member and each handler alternate member of the Board shall be a handler, or an officer or employee of a handler, who owns, or leases, and operates a cherry processing facility in the district for which nominated or appointed.

(c) The public member and alternate public member of the Board shall be prohibited from having any financial interest in the cherry industry and shall possess such additional qualifications as may be established by regulation.

§ 930.30 Powers.

The Board shall have the following powers:

(a) To administer this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 930.31 Duties.

The Board shall have, among others, the following duties:

(a) To select such officers, including a chairperson and vice-chairperson, as may be necessary, and to define the duties of such officers and the duties of the chairperson and the vice-chairperson;

(b) To employ or contract with such persons or agents as the Board deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such committees and subcommittees as may be necessary;

(d) To adopt bylaws and to adopt such rules for the conduct of its business as it may deem advisable;

(e) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period;

(f) To keep minutes, books, and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by the Secretary;

(g) To prepare periodic statements of the financial operations of the Board and to make copies of each statement available to growers and handlers for examination at the office of the Board;

(h) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The Board shall provide the Secretary with a copy of all audits and shall make copies of such audits, after the removal of any confidential individual grower or handler information that may be contained in them, available to growers and handlers for examination at the offices of the Board;

(i) To act as intermediary between the Secretary and any grower or handler with respect to the operations of this part;

(j) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(k) To apprise the Secretary of all Board meetings in a timely manner;

(l) To submit to the Secretary such available information as the Secretary may request;

(m) To investigate compliance with the provisions of this part;

(n) To develop and submit an annual marketing policy for approval by the Secretary containing the optimum supply of cherries for the crop year established pursuant to § 930.50 and recommending such action(s) necessary to achieve such optimum supply;

(o) To implement volume regulations established under § 930.50 and issued by the Secretary under § 930.51, including the release of any inventory reserves;

(p) To provide thorough communication to growers and handlers regarding the activities of the Board and to respond to industry inquiries about Board activities;

(q) To oversee the collection of assessments levied under this part;

(r) To enter into contracts or agreements with such persons and organizations as the Board may approve for the development and conduct of activities, including research and promotion activities, authorized under this part or for the provision of services required by this part and for the payment of the cost thereof with funds collected through assessments pursuant to § 930.41 and income from such assessments. Contracts or agreements for any plan or project shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget(s) which shall show the estimated cost to be incurred for such plan or project;

(2) Any contract or agreement for a plan or project and any plan or project adopted by the Board shall only become effective upon approval by the Secretary; and

(3) Every such contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(s) Pending disbursement consistent with its budget, to invest, with the approval of the Secretary, and in accordance with applicable Departmental policies, funds collected through assessments authorized under § 930.41 and income from such assessments;

(t) To establish standards or grade requirements for cherries for frozen and canned cherry products, subject to the approval of the Secretary;

(u) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part; and

(v) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the Act and the efficient administration of this subpart.

§ 930.32 Procedure.

(a) Twelve members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

(b) The Board may provide through its own rules and regulations, subject to approval by the Secretary, for simultaneous meetings of groups of its members assembled at different locations and for votes to be conducted by telephone or other means of communication. Votes so cast shall be promptly confirmed in writing.

(c) All meetings of the Board are open to the public, although the Board may hold portions of meetings in executive session for the consideration of certain business. The Board will establish, with the approval of the Secretary, a means of advanced notification of growers and handlers of Board meetings.

§ 930.33 Expenses and compensation.

Except for the public member and alternate public member who shall receive such compensation as the Board may establish and the Secretary may approve, the members of the Board, and alternates when acting as members,

shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this part. The Board at its discretion may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective member(s), and may pay the expenses of such alternates.

Expenses and Assessments

§ 930.40 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 930.41.

§ 930.41 Assessments.

(a) An assessment may be levied upon handlers annually under this part to cover the administrative costs of the Board, costs of inspection, and any research, development and promotion activities initiated by the Board under § 930.48.

(b) Each part of an assessment intended to cover the costs of each activity in paragraph (a) of this section, must be identified and approved by the Board and the Secretary, and any notification or other statement regarding assessments provided to handlers must contain such information.

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, a handler shall be exempt from any assessment on the tonnage of handled cherries that are diverted according to § 930.59 which includes cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers and those cherries devoted to exempt uses under § 930.62.

(d) The Secretary, after consideration of the recommendation of the Board, shall fix the rate of assessment to be paid by each handler during the fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be approved and incurred during such period or subsequent period as provided in paragraph (c) of this section. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the Board may accept the payment of assessments in advance, and may borrow money for such purposes.

(e) Assessments not paid within a time prescribed by the Board may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the Board and approved by the Secretary: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

(f) Assessments will be calculated on the basis of pounds of cherries handled: *Provided*, That the formula adopted by the Board and approved by the Secretary for determining the rate of assessment will compensate for differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products.

(g) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Board, with the approval of the Secretary, may carry over all or any portion of such excess into subsequent fiscal periods as a reserve. Such reserve funds may be used to cover any expenses authorized by this part, and to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. Without an additional reserve level approved by the Secretary, the amount held in reserve may not exceed approximately one year's operational expenses. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such a manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the Board pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Board and its members to account for all receipts and disbursements.

Quality Control

§ 930.44 Quality Control.

(a) *Quality standards.* The Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to cherries as will contribute to orderly marketing or be in the public interest. If such requirements are adopted, no handler shall process cherries into manufactured products or sell manufactured products in the current of commerce unless such cherries and/or such cherries used in the manufacture of products meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

(b) *Inspection and certification.* Whenever the handling of any cherries requires inspection pursuant to this part, each handler who handles cherries shall cause such cherries to be inspected by the appropriate division of USDA, and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for cherries which previously have been so inspected and certified only if such cherries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board a copy of the certificate of inspection issued with respect to such cherries.

Research, Market Development and Promotion

§ 930.48 Research, market mevelopment and promotion.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production and processing research, market research and development, and/or promotional activities, including paid advertising, designed to assist, improve or promote the efficient production and processing, marketing, distribution, and consumption of cherries subject to this

part. The expense of such projects shall be paid from funds collected pursuant to this part and the income from such funds.

Regulations

§ 930.50 Marketing policy.

(a) *Optimum Supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: From the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carryin inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted by the current year USDA crop forecast. If the resulting number is positive, this would represent the estimated over-production which would need to be the restricted percentage tonnage. This restricted percentage tonnage would then be divided by the sum of the USDA crop forecast for the regulated districts to obtain the percentages for the regulated districts. The Board shall establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the compliment being the preliminary free tonnage percentage. If subtracting the current crop year requirement, computed in the first sentence from the current USDA crop forecast, results in a negative number, the Board shall establish a preliminary free tonnage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

(c) *Interim percentages.* Between July 1 and September 15 of each crop year, the Board may modify the preliminary free market tonnage and restricted percentages to adjust to the actual pack occurring in the industry. The Board shall announce any interim percentages in accordance with paragraph (h) of this section.

(d) *Final percentages.* No later than September 15 of each crop year, the Board shall review actual production during the current crop year and make such adjustments as are necessary between free and restricted tonnage to achieve the optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation, the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

(1) The estimated total production of cherries;

(2) The estimated size of the crop to be handled;

(3) The expected general quality of such cherry production;

(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(5) The expected demand conditions for cherries in different market segments;

(6) Supplies of competing commodities;

(7) An analysis of economic factors having a bearing on the marketing of cherries;

(8) The estimated tonnage held by handlers in primary or secondary inventory reserves; and

(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year.

(f) *Modification.* In the event the Board subsequently deems it advisable to modify its marketing policy, because of national emergency, crop failure, or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show the Board's recommended modification and the basis therefor.

(g) *Reserve tonnage to sell as free tonnage.* In addition, the Board shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years for market expansion. Handlers can determine if they need the additional tonnage and inform the Board so that reserve cherries may be released to them. Handlers not desiring the additional tonnage would not have it released to them.

(h) *Publicity.* The Board shall promptly give reasonable publicity to growers and handlers of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them and to the public. Similar publicity shall be given to growers and handlers of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Board, where they shall be made available for examination. The Board shall notify handlers, and give reasonable publicity to growers, of its computation of the optimum supply, preliminary percentages, and interim percentages and shall notify handlers of the Secretary's action on final percentages by registered or certified mail.

(i) *Restricted Percentages.* Restricted percentage requirements established under paragraphs (b), (c) or (d) of this section may be fulfilled by handlers by either establishing an inventory reserve in accordance with § 930.55 or § 930.57 or by diversion of product in accordance with § 930.59. In years where required, the Board shall establish a maximum percentage of the restricted quantity which may be established as a primary inventory reserve such that the total primary inventory reserve does not exceed 50 million pounds. Handlers will be permitted to divert (at plant or with grower-diversion certificates) as much of the restricted percentage requirement as they deem appropriate, but may not establish a primary inventory reserve in excess of the percentage established by the Board for restricted cherries. In the event handlers wish to establish inventory reserve in excess of this amount, they may do so, in which case it will be classified as a secondary inventory reserve and will be regulated accordingly.

(j) *Inventory Reserve Release.* In years when inventory reserve cherries are available and when the expected availability of cherries from the current crop plus expected carryin inventory does not fulfill the optimum supply, the Board shall release not later than November 1st of the current crop year such volume from the inventory reserve as will satisfy the optimum supply.

(k) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.51 Issuance of volume regulations.

(a) Whenever the Secretary finds, from the recommendation and supporting information supplied by the Board, that to designate final free market tonnage and restricted percentages for any cherries acquired by handlers during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. Such regulation designating such percentage shall fix the free market tonnage and restricted percentages, totaling 100 percent, which shall be applied in accordance with this section, § 930.55, § 930.57 and § 930.59 to cherries grown in regulated districts, as determined under § 930.52, and handled during such fiscal period.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to handlers.

(c) That portion of a handler's cherries that are restricted percentage cherries is the product of the restricted percentage imposed under paragraph (a) of this section multiplied by the tonnage of cherries, originating in a regulated district, handled, including those diverted according to § 930.59, by that handler in that fiscal year. Therefore, while diverted cherries, including those represented by grower diversion certificates, may be exempt from assessment under § 930.41, they must be counted when computing restricted percentage requirements.

(d) The Board, with the approval of the Secretary, shall develop rules and regulations which shall provide guidelines for handlers in complying with any restricted tonnage requirements, including, but not limited to, a grace period of at least 30 days to segregate and appropriately document any tonnage they wish to place in the inventory reserve and to assemble any applicable diversion certificates.

§ 930.52 Establishment of districts subject to volume regulations.

(a) Upon adoption of this part, the districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. Handlers in districts not meeting the 15 million pound requirement at the time of order promulgation shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any three-year period in which the 15 million pound average production requirement is exceeded in that district.

(b) Handlers in districts which are not subject to volume regulation would only be so regulated to the extent that they handled cherries which were grown in a district subject to regulation as specified in paragraph (a) of this section. In such a case, the handler must place in inventory reserve pursuant to § 930.55 or § 930.57 or divert pursuant to § 930.59 the required restricted percentage of the crop originating in the regulated district.

(c) Handlers in districts not meeting the production requirement described in paragraph (a) of this section in a given year would not be subject to volume regulation in the next crop year.

(d) Any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

(e) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.53 Modification, suspension, or termination of regulations.

(a) In the event the Board at any time finds that, by reason of changed conditions, any regulations issued pursuant to §§ 930.44 or 930.51 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Board or from other available information, that a regulation issued pursuant to §§ 930.44 or 930.51 should be modified, suspended or terminated with respect to any or all shipments of cherries in order to effectuate the declared policy of the Act, the Secretary shall modify, suspend, or terminate such regulation.

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

(a) *Release of primary and secondary inventory reserve cherries.* Except as provided in § 930.50 and paragraph (b) of this section, cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person: *Provided,* That if the Board determines that the total available supplies for use in normal commercial outlets do not at least equal the amount, as estimated by the Board, needed to meet the demand in such outlets, the Board shall recommend to the Secretary and provide such justification that, during such period as may be recommended by the Board and approved by the Secretary, a portion or all of the primary and/or secondary inventory reserve cherries shall be released for such use.

(b) Reserved.

§ 930.55 Primary inventory reserves.

(a) Whenever the Secretary has fixed the free market tonnage and restricted percentages for any fiscal period, as provided for in § 930.51(a), each handler in a regulated district shall place in his or her primary inventory reserve for such period, at such time, and in such manner, as the Board may prescribe, or otherwise divert, according to § 930.59, a portion of the cherries acquired during such period.

(b) The form of the cherries, frozen, canned in any form, dried, or concentrated juice, placed in the primary inventory reserve is at the option of the handler. Except as may be limited by § 930.50(i) or as may be permitted pursuant to § 930.59 and § 930.62, such inventory reserve portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective restricted percentage fixed by the Secretary: *Provided,* That in converting cherries in each lot to the form chosen by the handler, the inventory reserve obligations shall be adjusted in accordance with uniform rules adopted by the Board in terms of raw fruit equivalent.

(c) Inventory reserve cherries shall meet such standards of grade, quality, or condition as the Board, with the approval of the Secretary, may establish. All such cherries shall be inspected by USDA. A certificate of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the grade of the product, the location where the lot is stored, identification marks (can codes or lot stamp), and a certification that the cherries meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board, at the place designated by the Board, a copy of the certificate of inspection issued with respect to such cherries.

(d) Handlers shall be compensated for inspection costs incurred on cherries placed in the primary inventory reserve. All reporting of cherries placed in, rotated in and out, or released from an inventory reserve shall be in accordance with rules and procedures established

by the Board, with the approval of the Secretary. The Board could, with the approval of the Secretary, also limit the number of inspections of reserve cherries being rotated into inventory reserves for which the Board would be financially liable.

(e) Except as provided in § 930.54, handlers may not sell inventory reserve cherries prior to their official release by the Board. Handlers may rotate cherries in their inventory reserves with prior notification to the Board. All cherries rotated into the inventory reserve must meet the applicable inspection requirements.

§ 930.56 Off-premise inventory reserve.

Any handler may, upon notification to the Board, arrange to hold inventory reserve, of his or her own production or which was purchased, on the premises of another handler or in an approved commercial storage facility in the same manner as though the inventory reserve were on the handler's own premises.

§ 930.57 Secondary inventory reserve.

(a) In the event the inventory reserve established under § 930.55 of this part is at its maximum volume, and the Board has announced, in accordance with § 930.50, that volume regulation will be necessary to maintain an orderly supply of quality cherries for the market, handlers in a regulated district may elect to place in a secondary inventory reserve all or a portion of the cherries the volume regulation would otherwise require them to divert in accordance with § 930.59.

(b) Should any handler in a regulated district exercise his or her right to establish a secondary inventory reserve under paragraph (a) of this section, all costs of maintaining that reserve, as well as inspection costs, will be the responsibility of the individual handler.

(c) The secondary inventory reserve shall be established in accordance with §§ 930.55 (b) and (c) and such other rules and regulations which the Board, with the approval of the Secretary, may establish.

(d) The Board shall retain control over the release of any cherries from the secondary inventory reserve. No cherries may be released from the secondary reserve until all cherries in any primary inventory reserve established under § 930.55 have been released. Any release of the secondary inventory reserve shall be in accordance with the annual marketing policy and with § 930.54.

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries.

(b) *Eligible diversion.* Grower diversion certificates shall be issued to growers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Diversion may take such of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.62; nonhuman food uses; or other uses, including diversion by leaving such cherries unharvested.

(c) *Application/mapping.* The Board, with the approval of the Secretary, shall develop rules and regulations providing for the diversion of cherries by growers. Such regulations may include, among other things:

(1) The form and content of applications and agreements relating to the diversion, including provisions for supervision and compensation; and

(2) Provisions for mapping areas in which cherries will be left unharvested.

(d) *Diversion certificate.* If the Board approves the application it shall so notify the applicant and conduct such supervision of the applicant's diversion of cherries as may be necessary to assure that the cherries have been diverted. After the diversion has been accomplished, the Board shall issue to the diverting grower a diversion certificate stating the weight of cherries diverted. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule prescribed in rules and regulations as the Board, with the approval of the Secretary, may recommend to implement this section.

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.62; contribution to a Board approved food bank or other approved charitable organization; acquisition of grower diversion certificates that have been issued in accordance with § 930.58; or other uses, including diversion by destruction of the cherries at the handler's facilities: *Provided,* That diversion may not be accomplished by converting cherries into juice or juice concentrate.

(c) *Notification.* The handler electing to divert cherries through means specified in this section or other approved means (not including uses exempt under § 930.62), shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision shall be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Application.* The handler electing to divert cherries by utilizing an exemption under § 930.62 shall first apply to the Board for approval of such diversion; no diversion should take place prior to such approval. Such application shall describe in detail the uses to which the diverted cherries will be put. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the applicant. The Board shall notify the applicant of the Board's approval or disapproval of the submitted application.

(e) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) or under paragraph (d) of

this section as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

§ 930.60 Equity holders.

(a) *Inventory reserve ownership.* The inventory reserve shall be the sole responsibility of the handlers who place products into the inventory reserve. A handler's equity in the primary inventory reserve may be transferred to another person upon notification to the Board.

(b) *Agreements with growers.* Individual handlers are encouraged to have written agreements with growers who deliver their cherries to the handler as to how any restricted percentage cherries delivered to the handler will be handled and what share, if any, the grower will have in the eventual sale of any inventory reserve cherries.

(c) *Rulemaking authority.* The Board, with the approval of the Secretary, may adopt rules and regulations necessary and incidental to the administration of this section.

930.61 Handler compensation.

Each handler handling cherries from a regulated district that is subject to volume regulations shall be compensated by the Board for inspection relating to the primary inventory reserve as the Board may deem to be appropriate. The Board, with the approval of the Secretary, may establish such rules and regulations as are necessary and incidental to the administration of this section.

§ 930.62 Exemptions.

The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 940.44, § 930.51, § 930.53, and § 930.55 through § 930.57 cherries: Diverted in accordance with § 930.59; used for new product and new market development; used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized. The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

§ 930.63 Deferment of restricted obligation.

(a) *Bonding.* The Board, with the approval of the Secretary, may require handlers to secure bonds on deferred inventory reserve tonnage. Handlers may, in order to comply with the requirements of §§ 930.50 and 930.51 and regulations issued thereunder, secure bonds on restricted percentage cherries to temporarily defer the date that inventory reserve cherries must be held to any date requested by the handler. This date shall be not later than 60 days prior to the end of that crop year. Such deferment shall be conditioned upon the voluntary execution and delivery by the handler to the Board of a written undertaking within thirty (30) days after the Secretary announces the final restricted percentage under § 930.51. Such written undertaking shall be secured by a bond or bonds with a surety or sureties acceptable to the Board that on or prior to the acceptable deferred date the handler will have fully satisfied the restricted percentage amount required by § 930.51.

(b) *Rulemaking authority.* The Board, with the approval of the Secretary, may adopt rules and regulations necessary and incidental to the administration of this section.

Reports and Records

§ 930.70 Reports.

(a) *Weekly production, monthly sales, and inventory data.* Each handler shall, upon request of the Board, file promptly with the Board, reports showing weekly production data; monthly sales and inventory data; and such other information, including the volume of any cherries placed in or released from a primary or secondary inventory reserve or diverted, as the Board shall specify with respect to any cherries handled by the handler. Such information may be provided to the Board members in summary or aggregated form only without any reference to the individual sources of the information.

(b) *Other reports.* Upon the request of the Board, with the approval of the Secretary, each handler shall furnish to the Board such other information with respect to the cherries acquired, handled, stored and disposed of by such handler as may be necessary to enable the Board to exercise its powers and perform its duties under this part.

(c) *Protection of proprietary information.* Under no circumstances shall any information or reports be made available to the Board members, or to any person designated by the Board or by the Secretary, which will reveal the proprietary information of an individual handler.

§ 930.71 Records.

Each handler shall maintain such records of all cherries acquired, handled, stored or sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the Board. All such records shall be maintained for not less than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Board may direct with the approval of the Secretary.

§ 930.72 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers premises and any and all records of such handlers with respect to matters within the purview of this part.

§ 930.73 Confidential information.

All reports and records furnished or submitted by handlers to the Board and its authorized agents which include data or information constituting a trade secret or disclosing trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the Board or its agent, who shall disclose such information to no person other than the Secretary.

Miscellaneous Provisions

§ 930.80 Compliance.

Except as provided in this part, no person may handle cherries, the handling of which has been prohibited by the Secretary under this part, and no person shall handle cherries except in conformity with the provisions of this part and the regulations issued hereunder. No person may handle any cherries for which a diversion certificate has been issued other than as provided in § 930.58(b) and § 930.59(b).

§ 930.81 Right of the Secretary.

Members of the Board (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time.

Each regulation, decision, determination, or other act of the Board shall be subject to the Secretary's disapproval at any time. Upon such disapproval, the disapproved action of the Board shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 930.82 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or suspended.

§ 930.83 Termination.

(a) The Secretary may, at any time, terminate any or all of the provisions of this part by giving at least 1 day's notice by means of a press notice or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers and processors: *Provided*, That such majority has, during the current fiscal year, produced or canned and frozen more than 50 percent of the volume of the cherries which were produced or processed within the production area. Such termination shall become effective on the last day of June subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the month of March of every sixth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and processors. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance is not favored by a majority of growers and processors who, during a representative period determined by the Secretary, have been engaged in the production or processing of tart cherries in the production area. Such termination shall be announced on or before the end of the fiscal period.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 930.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the Board shall, for the purpose of liquidating the affairs of the Board, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) continue in such capacity until discharged by the Secretary;

(2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or in the trustees pursuant to this part.

(c) Any person to whom funds, property, and claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligations imposed upon the Board and upon the trustees.

§ 930.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may thereafter arise in connection with any provision of this part or any regulation issued thereunder;

(b) Release or extinguish any violation of this part or any regulation issued thereunder;

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 930.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 930.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any provisions of this part.

§ 930.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 930.89 Personal liability.

No member or alternate member of the Board and no employee or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 930.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 930.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by the Secretary.

Dated: September 19, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–24505 Filed 9–23–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 955

[Docket No. FV96–955–1 IFR]

Vidalia Onions Grown in Georgia; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Vidalia Onion Committee (Committee) under Marketing Order No. 955 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that

are reasonable and necessary to administer the program.

DATES: Effective on September 15, 1996. Comments received by October 24, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Assistant, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 941–299–4770; FAX 941–299–5169, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918; FAX 202–720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Vidalia onions beginning September 15, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of Vidalia onions in the production area and approximately 145 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The Vidalia onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on August 1, 1996, and unanimously recommended 1996–97 expenditures of $370,000 and an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions. In comparison, last year's budgeted expenditures were $343,000. The assessment rate of $0.10 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 fiscal period include $110,000 for marketing, $95,000 for research, $139,000 for program administration, and $26,000 for compliance. Budgeted expenses for these items in 1995–96 were $146,500, $48,500, $122,600, and $25,400, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Vidalia onion shipments for the year are estimated at 3,614,000 which should provide $361,400 in assessment income. The Committee also anticipates shipments of 70,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional $7,000 in assessment income. Income derived from handler assessments, along with interest income, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and

consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on September 15, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Vidalia onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new undesignated center heading—Assessment Rates and a new § 955.209 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Assessment Rates

§ 955.209 Assessment rate.

On and after September 15, 1996, an assessment rate of $0.10 per 50-pound bag or equivalent is established for Vidalia onions.

Dated: September 17, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24241 Filed 9–23–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 981

[Docket No. FV96–981–2 FIR]

Almonds Grown in California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established an assessment rate for the Almond Board of California (Board) under Marketing Order No. 981 for the 1996–97 and subsequent crop years. The Board is responsible for local administration of the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Tershirra Yeager, Marketing Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (209) 720–5127, or FAX # (202) 720–5698; or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (202) 720–1509 or FAX # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax# (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almonds are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds beginning July 1, 1996, and continuing until amended, suspended or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California almond producers and handlers may be classified as small entities.

The California almond marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The Board met on May 10, 1996, and unanimously recommended 1996–97 crop year expenditures of $6,426,500 and an assessment rate of $0.01 per pound of almonds. In comparison, last year's budgeted expenditures were $4,952,591 with the assessment rate of $0.75 per pound. Major expenditures recommended by the Board for the 1996–97 crop year include $3,333,500 for information and research, $731,534 for salaries, $660,500 for international programs, $558,131 for production research, $97,470 for travel, and $91,160 for crop estimate. Budgeted expenses for these items in 1995–96 were $2,358,000, $598,251, $150,000, $512,650, $75,000, and $90,736, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected receipts of California almonds. Almond shipments for the year are estimated at 504.4 million pounds which should provide $5.044 million in assessment income. Income derived from handler assessments, interest, a production research conference, and the Market Access Program, along with funds derived from the Board's authorized reserve, will be adequate to cover budgeted expenses. Any unexpended funds from the 1996–97 crop year may be carried over to cover expenses during the first four months of the 1997–98 crop year.

An interim final rule regarding this action was published in the July 31, 1996, issue of the Federal Register (61 FR 39841). That rule provided for a 30-day comment period. No comments were received.

While this rule may impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year began on July 1, 1996, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action, providing a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 981—ALMONDS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR Part 981 which was published at 61 FR 39841 on July 31, 1996, is adopted as a final rule without change.

Dated: September 16, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24455 Filed 9–23–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 987

[Docket No. FV96–987–1 IFR]

Domestic Dates Produced or Packed in Riverside County, CA; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the California Date Administrative Committee (Committee) under Marketing Order No. 987 for the 1996–97 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of domestic dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on October 1, 1996. Comments received by October 24, 1996 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public

inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Maureen Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901, FAX 209–487–5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–2491, FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning October 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 producers of California dates in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California date producers and handlers may be classified as small entities.

The California date marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on July 18, 1996, and by a vote of 8 to 1 recommended 1996–97 gross operating expenditures of $60,000 and an assessment rate of $0.0556 per hundredweight of dates. Included in the gross operating expenditures is a $40,000 surplus account contribution, resulting in net operating expenditures of $20,000. In comparison, last year's net budgeted expenditures were $774,218, after a $42,000 surplus account contribution was deducted. The assessment rate of $0.0556 is $2.1944 lower than last year's established rate. The budgeted expenditures and assessment rate are significantly lower than last year because the Committee does not plan to conduct promotional activities under the Federal marketing order. Over the past year, the industry formed the California Date Commission (Commission), a State organization that will be conducting promotional activities for the industry. The no vote on the budget came from a grower who opposed formation of the Commission and has expressed a concern that the organization is composed of handlers only and no growers. Major expenditures recommended by the Committee for the 1996–97 crop year include $43,586 for salaries and benefits and $14,766 for office expenses. Budgeted expenses for these items in 1995–96 were $121,500 and $33,300, respectively. Included in the $60,000 gross operating budget is a $40,000 surplus account contribution, for a net operating budget of $20,000, $98,000 less than last year.

Under the Federal marketing order, the Committee's staff manages a surplus pool for low quality dates. The expenses incurred for this activity are paid for with proceeds from the sale of such dates, not assessment income.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California dates. Date shipments for the year are estimated at 360,000 hundredweight, which should provide $20,016 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order. Funds held by the Committee at the end of the crop year, including the reserve, which are in excess of the crop year's expenses may be used to defray expenses for four months and thereafter the Committee shall refund or credit the excess funds to the handlers.

This action will reduce the assessment rate to be imposed on handlers during the 1996–97 crop year. While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited

to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 crop year begins on October 1, 1996, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new Subpart—Assessment Rates and a new § 987.339 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 987.339 Assessment rate.

On and after October 1, 1996, an assessment of $0.0556 per hundredweight is established for California dates.

Dated: September 16, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24238 Filed 9–23–96; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 230, 239, 240, 249, 250, 259, 270, 274, and 275

[Release Nos. 33–7331; 34–37692; 35–26575; IC–22224; IA–1578; File No. S7–14–96]

RIN 3235–AG79

Changes Selected Rules In Order To Eliminate Fees Previously Adopted by the Commission Pursuant to the Independent Offices Appropriations Act of 1952

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (Commission), in order to eliminate user fees currently adopted under the Independent Offices Appropriations Act of 1952 is changing various rules pertaining to the Securities Act of 1933 (Securities Act), the Securities Exchange Act of 1934 (Exchange Act), the Public Utility Holding Company Act of 1935 (Public Utility Holding Company Act), the Investment Company Act of 1940 (Investment Company Act), and the Investment Advisers Act of 1940 (Investment Advisers Act). The fees being eliminated were first adopted in 1972 to contribute towards the cost of agency operations. Since that time, however, the amount of fees collected by the Commission has increased dramatically. In 1995, the Commission collected nearly double the amount of fees required to fund the agency's operations. The fees being eliminated represented just two percent of the Commission's total fiscal 1995 fee revenue, but more than one-half of the total number of fee payments processed.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Henry I. Hoffman, Office of the Comptroller, at (202) 942–0343.

SUPPLEMENTARY INFORMATION: In 1972, to offset the cost to the government of Commission operations, the Securities and Exchange Commission established through rulemaking a fee schedule for numerous types of applications, statements and reports.[1] These regulatory fees, authorized under Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), are commonly referred to as IOAA fees.[2]

On May 22, 1996, a proposed rule titled Proposal To Eliminate Fees Previously Adopted by the Commission Pursuant to the Independent Offices Appropriations Act of 1952 was published in the Federal Register. (Vol. 61, No. 100, pages 25601–25604). The proposed rule invited interested parties to submit comments on or before July 8, 1996. Three comment letters were received, one each from two mutual fund complexes and one trade association.[3] Each response supported

[1] Securities Act, Release No. 5229, January 25, 1972.

[2] The Independent Offices Appropriations Act of 1952, specifically 31 U.S.C. 9701, authorizes independent agencies of the federal government to prescribe fees and charges for activities that provide benefits to individuals and businesses. This statute states that ''[i]t is the sense of Congress that each service * * * provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.'' The statute also authorizes the head of each agency to prescribe regulations establishing the charge for a service. Notably, a separate provision of the Exchange Act specifically authorizes the Commission to impose fees authorized by this Act. 15 U.S.C. 78n(g)(4).

[3] The three respondents to the Commission's elimination of IOAA fees were T. Rowe Price Associates, Inc. in a June 7, 1996, letter signed by Henry H. Hopkins, Managing Director and Legal Counsel, Federated Investors in a June 27, 1996, letter signed by Jay S. Neuman, Corporate Counsel, and the Investment Company Institute in a June 25, 1996, letter signed by Alexander C. Gavis, Assistant Counsel. These letters are available for public

Continued

the proposal to eliminate the Commission's IOAA fees. One respondent noted that their experience with the IOAA fees was similar to the Commission's experience, *i.e.* ''* * * while the aggregate dollar amounts of these fees are relatively insignificant * * * the recordkeeping and processing costs associated with them are disproportionately high * * *.'' [4] Further, the respondent stated that the ''* * * adoption of the proposal would simplify and enhance the efficiency of (its) servicing operations.'' [5] Effective October 7, 1996, the Commission is eliminating each of its current IOAA fees.[6] The collection of these fees is no longer appropriate since the amount of revenue currently generated by statutory fees imposed under the securities laws far exceeds the annual cost of Commission operations, and the additional revenue added by the IOAA fees is an insignificant portion of the total revenue received.

In fiscal 1972, the Commission collected $19 million in fees and cost $27 million to operate. IOAA fees represented 12 percent of the total 1972 revenue. In fiscal 1995, the Commission collected $559 million in fees and was appropriated $297 million for operating costs. IOAA fees represented just 2 percent of the total 1995 revenue.[7]

This significant difference between the amount of fee revenue collected by the Commission and the amount of its annual funding level has been of continuing concern to Congress. In 1988, the Securities Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs directed the Commission to study its fee structure and funding status (Commission Fee Study).[8]

As a result of the Commission Fee Study and continuing Congressional concerns about the level of the Commission's annual fee collections, in 1993 the House passed H.R. 2239, the Securities and Exchange Commission Authorization Act of 1993. One of the stated purposes of this bill was to ''establish a system for the annual adjustment of fees collected by the Commission so that the total amount appropriated to the Commission for any fiscal year will be offset by the amount collected during such fiscal year * * *.'' [9]

Although Congress did not enact H.R. 2239, in 1995, members of the Commission's authorization committee in the Senate stated that the total amount of fees collected annually by the agency far exceed the cost of its regulation and, therefore, should be reduced.[10]

On March 12, 1996, the House passed H.R. 2972, the Securities and Exchange Commission Authorization Act of 1996. One of this bill's major purposes is ''to reduce over time the rates of fees charged under the Federal securities laws.'' [11] Notably, H.R. 2972 contains a sense of the Congress resolution that the Commission should eliminate its fees imposed under the IOAA.[12] The Securities and Exchange Commission Authorization Act of 1996, H.R. 2972, has since been repassed as Title 3 of H.R. 3005, the securities bill that was passed by the House on June 19, 1996. The Senate counterpart to H.R. 3005, S. 1815, does not contain the SEC reauthorization bill.

The Commission is eliminating its IOAA fees for two additional reasons. First, the Commission is committed, consistent with its mission of protecting investors, to eliminating unnecessary regulations imposed on the capital formation process. The Commission has determined that this elimination of its IOAA fees will reduce such burdens but will not harm investors nor the Commission's mission to protect them. Second, the collection of these IOAA fees imposes a disproportionate cost on the Commission. In 1995, IOAA fees represented less than 2% of the total fee revenue collected by the Commission, but more than one-half of the total number of fee payments processed by Commission staff, making recordkeeping for these fees disproportionately costly.

Cost/Benefit Analysis

This elimination of IOAA fees will provide an obvious benefit to persons obligated to pay such fees, *i.e.*, they will no longer have to pay the fees. In addition, the Commission will avoid the costs associated with processing and auditing the collection of such fees; Commission resources spent on those tasks will be reallocated to other mandated tasks. Other costs and benefits are expected to be *de minimis*.

Regulatory Flexibility Act

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding the proposed rule changes. The analysis reiterates the reasons and objectives for the proposed rule changes discussed above in this release. The analysis also describes the legal basis for the proposal and discusses its effect on small entities as defined by the Securities Act, the Exchange Act, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. The rules impose no additional reporting, recordkeeping or other compliance requirements on small businesses, and the Commission believes that there are no overlapping or conflicting federal rules. In addition, the Commission does not believe that any significant alternative to the proposal would both accomplish the stated objectives and minimize any significant impact on small companies. In fact, the alternatives to eliminating the fee would be to maintain or increase the current fees. Neither alternative provides any increased benefit nor is appropriate in the public interest. An Initial Regulatory Flexibility Analysis was prepared in connection with the proposed rule changes which were published in the Federal Register on May 22, 1996. No comments were received regarding the analysis. A copy of the Final Regulatory

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inspection under File S7–14–96 in the Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

[4] Federated Investors.

[5] *Id.*

[6] The Commission's action only eliminates the collection of regulatory fees imposed under the IOAA; it does not affect other fees imposed by statute which are also collected by the Commission. These statutory fees include registration fees collected pursuant to section 6(b) of the Securities Act and section 307(b) of the Trust Indenture Act of 1939, going private fees collected pursuant to section 13 of the Exchange Act, proxy and tender offer fees collected pursuant to section 14 of the Exchange Act, and transaction fees collected pursuant to section 31 of the Exchange Act.

[7] The vast increase in Commission fee revenue between 1972 and 1995 has developed from two basic sources. First is a significant increase in the underlying value of the securities on which the statutory fees are based. The underlying value of securities registered with the Commission under section 6(b) of the Securities Act increased from $62 billion to $1.2 trillion from 1972 to 1995. Further, during the same period, the value of shares transacted on the U.S. securities exchanges and subject to a fee under Section 31 of the Exchange Act increased from $196 billion to $3 trillion. Second is the increased use of offsetting collections under section 6(b) of the Securities Act to fund agency operations since 1990. The amount of offsetting revenue collected under section 6(b) in 1991, the first year fee revenue was used to directly offset Commission funding, was $37 million at a fee rate of 1/40 of one percent, and in 1995 was $157 million at an increased fee rate of 1/29 of one percent.

[8] Senate Report 100–105, 100th Cong., 1st Session. In response, the Commission issued findings in a U.S. Securities and Exchange Commission ''Self Funding Study'' (January 1989) and accompanying ''Legislative Proposals and Fee Options'' (January 1989).

[9] H.R. 2239, section 31A.(a).

[10] Letter dated April 6, 1995, from Senator D'Amato, Chairman of the Senate Banking Committee, to Senators Domenici and Exon, respectively Chairman and Ranking Member of the Senate Committee on the Budget.

[11] H.R. 2972, section 2(2).

[12] Ibid, section 7(1) states that ''the fees authorized by the amendments made by this Act are in lieu of, and not in addition to, any fees that the Securities and Exchange Commission is authorized to impose or collect pursuant to section 9701 of title 31, United States Code* * *.''

Flexibility Analysis may be obtained by contacting Henry I. Hoffman, Securities and Exchange Commission, Office of the Comptroller, Room 2080, Washington, D.C. 20549.

Effective Date

The final amendments to the Commission's rules shall be effective on October 7, 1996, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for, *inter alia*,, ''a substantive rule which grants or recognizes an exemption or relieves a restriction'' and ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(1) and (d)(3). The Commission finds good cause for the rules to be effective on October 7, 1996, in order to coordinate the elimination of the user fees with the beginning of the fiscal year.

Statutory Basis

The Commission's authority for this action is 31 U.S.C. 9701 and 15 U.S.C. 78n(g)(4).

The amendments to the Commission's rules, forms and schedules under the Securities Act and amendments to the Commission's rules under the Exchange Act are being adopted pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act and sections 3, 4, 10, 12, 13, 14, 15, 16 and 23 of the Exchange Act. The revisions to the Commission's rules and forms under the Public Utility Holding Company Act of 1935 are being adopted pursuant to section 20 of the Public Utility Holding Company Act. The revisions to the Commission's rules and forms under the Investment Company Act are being adopted pursuant to sections 8(b) and 38(a) under the Investment Company Act, as amended. And the revisions to the Commission's rules and forms under the Investment Advisers Act of 1940 are being adopted pursuant to sections 203(c) and 211(a) of the Investment Advisers Act.

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Parts 230, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 239, 240, 249, 250, 259 and 275

Reporting and recordkeeping requirements, Securities.

Text of Amendments

For the reasons set out in the preamble, Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

2. The first sentence of the introductory text of § 202.3a is revised to read as follows:

§ 202.3a Instructions for filing fees.

Payment of filing fees specified by the following rules shall be made according to the directions listed in this part: § 230.111 (17 CFR 230.111), § 240.0–9 (17 CFR 240–0.9), § 260.7a-10 (17 CFR 260.7a-10), and § 270.0–8 (17 CFR 270.0–8).

* * * * *

3. The fourth sentence of the introductory text of § 202.3a is revised to read as follows:

§ 202.3a Instructions for filing fees.

* * * Personal checks cannot be accepted for payment of fees. * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

§ 230.111 [Amended]

5. By amending § 230.111 by removing the last sentence of paragraph (a).

§ 230.236 [Amended]

6. By amending § 230.236 by removing the second sentence of paragraph (a) and the last sentence of paragraph (c)(4).

§ 230.252 [Amended]

7. By amending § 230.252 by removing and reserving paragraph (f).

§ 230.604 [Amended]

8. Paragraph (a) of § 230.604 is amended by removing the last sentence.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

10. By revising § 240.0–9 to read as follows:

§ 240.0–9 Payment of fees.

All payment of fees shall be made in cash, certified check or by United States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

11. By amending § 240.0–11 by revising paragraph (c)(1)(ii) to read as follows:

§ 240.0–11 Filing fees for certain acquisitions, dispositions and similar transactions.

* * * * *

(c) * * *

(1) * * *

(ii) Notwithstanding the above, where the acquisition, merger or consolidation is for the sole purpose of changing the registrant's domicile, no filing fee is required to be paid.

* * * * *

§ 240.12b–7 [Removed]

12. Section 240.12b–7 is removed.

§ 240.13a–1 [Amended]

13. By amending § 240.13a–1 by removing the last sentence.

§ 240.13d–7 [Removed]

14. Section 240.13d–7 is removed.

§ 240.13d–101 [Amended]

15. By amending § 240.13d–101 by removing the second paragraph on the cover page that appears after the first check box and immediately before the ''Note:''.

§ 240.13d–102 [Amended]

16. By amending § 240.13d–102 by removing the first paragraph on the cover page that appears after the ''(CUSIP Number)''.

17. By amending § 240.14a–6 by revising paragraph (i) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(i) *Fees.* At the time of filing the proxy solicitation material, the persons upon whose behalf the solicitation is made, other than investment companies registered under the Investment Company Act of 1940, shall pay to the Commission the following applicable fee:

(1) For preliminary proxy material involving acquisitions, mergers, spinoffs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0–11 (§ 240.0–11 of this chapter) shall be paid. No refund shall be given.

(2) For all other proxy submissions and submissions made pursuant to § 240.14a–6(g), no fee shall be required.

* * * * *

18. By amending § 240.14a–101 by revising the cover page to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant [ ]
Filed by a party other than the Registrant [ ]
Check the appropriate box:
[ ] Preliminary Proxy Statement
[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14a–6(e)(2))
[ ] Definitive Proxy Statement
[ ] Definitive Additional Materials
[ ] Soliciting Material Pursuant to § 240.14a–11(c) or § 240.14a–12

_____

(Name of Registrant as Specified In Its Charter)

_____

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):
[ ] No fee required
[ ] Fee computed on table below per Exchange Act Rules 14a–6(i)(1) and 0–11
(1) Title of each class of securities to which transaction applies:

_____

(2) Aggregate number of securities to which transaction applies:

_____

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0–11 (set forth the amount on which the filing fee is calculated and state how it was determined):

_____

(4) Proposed maximum aggregate value of transaction:

_____

(5) Total fee paid:

_____

[ ] Fee paid previously with preliminary materials.
[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0–11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
(1) Amount Previously Paid:

_____

(2) Form, Schedule or Registration Statement No.:

_____

(3) Filing Party:

_____

(4) Date Filed:

_____

Notes. * * *

* * * * *

§ 240.14a–101 [Amended]

19. Item 22 of § 240.14a–101 is amended by removing and reserving paragraph (a)(2).

20. By amending § 240.14c–5 by revising paragraph (g) to read as follows:

§ 240.14c–5 Filing Requirements.

* * * * *

(g) *Fees.* At the time of filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee, no part of which shall be refunded, established in accordance with § 240.0–11.

* * * * *

21. By amending § 240.14c–101 by revising the cover page to read as follows:

§ 240.14c–101 Schedule 14C. Information required in information statement.

Schedule 14C Information

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934

(Amendment No.)

Check the appropriate box:
[ ] Preliminary Information Statement
[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14c–5(d)(2))
[ ] Definitive Information Statement

_____

(Name of Registrant As Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):
[ ] No fee required
[ ] Fee computed on table below per Exchange Act Rules 14c–5(g) and 0–11
(1) Title of each class of securities to which transaction applies:

_____

(2) Aggregate number of securities to which transaction applies:

_____

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0–11 (set forth the amount on which the filing fee is calculated and state how it was determined):

_____

(4) Proposed maximum aggregate value of transaction:

_____

(5) Total fee paid:

_____

[ ] Fee paid previously with preliminary materials.
[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0–11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
(1) Amount Previously Paid:

_____

(2) Form, Schedule or Registration Statement No.:

_____

(3) Filing Party:

_____

(4) Date Filed:

_____

Note * * *

* * * * *

§ 240.15d–11 [Amended]

22. By amending § 240.15d–1 by removing the last sentence.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

23. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78, *et seq.*, unless otherwise noted;

* * * * *

§ 249.240 [Amended]

24. By amending Form 40–F (referenced in § 249.240f) by removing paragraph D.(5) of General Instructions and redesignating paragraphs D.(6), D.(7), D.(8), D.(9) and D.(10) as paragraphs D.(5), D.(6), D.(7), D.(8) and D.(9).

Note: The text of Form 40–F does not appear and this amendment will not appear in the Code of Federal Regulations.

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

25. The authority citation for Part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

§ 250.1 [Amended]

26. Section 250.1 is amended by removing paragraph (d).

§ 250.94 [Amended]

27. Section 250.94 is amended by removing paragraph (b).

§ 250.106 [Removed]

28. Section 250.106 is removed and reserved.

§ 250.107 [Removed]

29. Section 250.107 is removed and reserved.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

30. The authority citation for Part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

§ 259.404 [Amended]

31. The preamble to the Instructions for Form U–7D (referenced in § 259.404) is revised to read as follows:

Note: The text of Form U–7D does not and this amendment will not appear in the Code of Federal Regulations.

Form U–7D

* * * * *

Instructions

This form must be filed in triplicate within 30 days after execution of any lease of a utility facility to an operating public-utility company. Rules 21 and 22 under the Act govern the specifications. Official Form U–7D and these instructions specify the contents.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

32. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

§ 270.0–5 [Amended]

33. Section 270.0–5 is amended by removing paragraph (d).

34. By revising § 270.0–8 to read as follows:

§ 270.0–8 Payment of fees.

All payment of fees shall be made in cash, certified check or by United States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

* * * * *

§ 270.8b–6 [Removed]

35. Section 270.8b–6 is removed and reserved.

36. § 270.24f–2 is amended by removing paragraph (a)(3), redesignating paragraph (a)(4) as paragraph (a)(3), and revising newly designated paragraph (a)(3) to read as follows:

§ 270.24f–2 Registration under the Securities Act of 1933 of an indefinite number of certain investment company securities.

* * * * *

(a) * * *

(3) If such registration statement also registers a definite number or amount of securities, there shall be paid to the Commission with respect to such definite amount of securities a registration fee calculated in the manner specified in section 6(b) of the Securities Act of 1933, (15 U.S.C. 77f(b)) and the rules and regulations thereunder.

* * * * *

§ 270.30a–1 [Amended]

37. Section 270.30a–1 is amended by removing the third sentence.

§ 270.30b1–1 [Amended]

38. Section 270.30b1–1 is amended by removing the second sentence.

§ 270.30b1–3 [Amended]

39. Section 270.30b1–3 is amended by removing the last sentence.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

40. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

41. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

§ 239.15A [Amended]

§ 274.11A [Amended]

42. General Instruction B of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by removing the second and third sentences.

Note: The text of Form N–1A does not and these amendments will not appear in the Code of Federal Regulations.

§ 239.14 [Amended]

§ 274.11a–1 [Amended]

43. General Instruction B of Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by removing the second and third sentences.

Note: The text of Form N–2 does not and these amendments will not appear in the Code of Federal Regulations.

§ 239.17a [Amended]

§ 274.11b [Amended]

44. General Instruction B of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by removing the second and third sentences.

Note: The text of Form N–3 does not and these amendments will not appear in the Code of Federal Regulations.

§ 239.17b [Amended]

§ 274.11c [Amended]

45. General Instruction B of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by removing the second and third sentences.

Note: The text of Form N–4 does not and these amendments will not appear in the Code of Federal Regulations.

§ 249.330 [Amended]

§ 274.101 [Amended]

46. General Instruction C of Form N–SAR (referenced in §§ 249.330 and 274.101) is amended by removing the third undesignated paragraph.

§ 249.330 [Amended]

§ 274.101 [Amended]

47. General Instruction G of Form N–SAR (referenced in §§ 249.330 and 274.101) is amended by removing paragraph (5).

Note: The text of Form N–SAR does not and these amendments will not appear in the Code of Federal Regulations.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

48. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, 80b–11, unless otherwise noted.

* * * * *

§ 275.0–5 [Amended]

49. Section 275.0–5 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

§ 275.203–3 [Removed]

50. Section 275.203–3 is removed.

Dated: September 17, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24368 Filed 9–23–96; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AE22

Income Exclusions in the Supplemental Security Income Program

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These supplemental security income (SSI) regulations update existing regulations to reflect the statutory amendment of the exclusion from income of Alaska Longevity Bonus (ALB) payments. They also update existing regulations to reflect the statutory exclusion from income of hostile fire pay received by an SSI claimant or recipient and reflect the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. In addition, they update existing regulations to reflect the current operating procedure of excluding impairment-related work expenses, interest on excluded burial funds, appreciation in the value of excluded burial arrangements, and interest on the value of excluded burial space purchase agreements, when determining the countable income of an ineligible spouse or ineligible parent.

EFFECTIVE DATE: These regulations are effective October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Regarding this Federal Register document—Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: For purposes of the SSI program, income is defined in our regulations to mean anything that is received in cash or in kind which can be used to meet an individual's needs for food, clothing, or shelter. These regulations include certain provisions which address items that are excluded from income.

Alaska Longevity Bonus Payments

Under section 1612(b)(2)(B) of the Social Security Act (the Act), ALB payments are excluded from income under certain circumstances.

Originally, the ALB program made monthly payments to residents of Alaska who had attained age 65 and had lived in the State continuously for at least 25 years. The SSI income exclusion applied to such payments if made under a program established before July 1, 1973. However, following a decision by the Alaska State Supreme Court that the 25-year residency requirement was unconstitutional, in 1984 the State legislature changed the residency requirement to 1 year.

Concerns were raised that since the revised (1984) ALB program was established after July 1, 1973, the controlling date of the original section 1612(b)(2)(B) provision, payments made under the revised ALB program could no longer be excluded for SSI purposes. Section 2616 of Public Law (Pub. L.) 98–369 was enacted on July 18, 1984 to address those concerns. Section 2616 amended section 1612(b)(2)(B) of the Act in such a way as to:

- Continue the ALB exclusion for persons who, prior to October 1985, became eligible for SSI and satisfied the 25-year residence requirement of the program as in effect prior to January 1, 1983; and
- Preclude extending the ALB exclusion to ALB payments based on the 1-year residency requirement.

Current regulations at §§ 416.1124(c)(7) and 416.1161(a)(12) follow the wording of the original statutory exclusion in section 1612(b)(2)(B) of the Act. Regulations at § 416.1124(c)(7) presently provide for excluding from the income of a claimant or recipient ''[p]eriodic payments made by a State under a program established before July 1, 1973, and based solely on your length of residence and attainment of age 65 * * *.'' Regulations at § 416.1161(a)(12) presently provide for excluding from the income of an ineligible spouse or ineligible parent ''[p]eriodic payments made by a State under a program established before July 1, 1973, and based solely on duration of residence and attainment of age 65 * * *.''

These regulations change the wording of the above referenced regulations so that they conform to the 1984 legislation. The regulatory language will not change current operating procedures since those procedures already conform to the 1984 legislation.

Hostile Fire Pay

Although it is unlikely that an active member of the uniformed services would apply or be eligible for SSI benefits, some military service members have spouses and children who apply for and receive SSI benefits.

Under section 209(d) of the Act, basic pay is the only form of compensation to members of the uniformed services that is treated as wages for title II purposes. Under section 1612(a)(1) of the Act, earned income in the form of wages for SSI purposes is the same as wages for the title II annual earnings test.

Therefore, basic pay is the only form of military compensation that is treated as wages, and hence, as earned income, for SSI purposes.

All other forms of compensation to members of the uniformed services are considered unearned income. These other forms of compensation include allowances paid in cash for food, clothing, and shelter; free food, clothing, and shelter; and special and incentive pay.

One form of special pay is hostile fire pay, which is authorized under 37 U.S.C. 310. Hostile fire pay is a type of special pay to a service member who, for any month he/she is entitled to basic pay, is:

- Subject to hostile fire or explosion of hostile mines; or
- On duty in an area in which he/she is in imminent danger of being exposed to hostile fire or explosion of hostile mines, and

While on duty in that area, other service members in the same area are subject to hostile fire or explosion of hostile mines; or

- Killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action.

Section 13733(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), Public Law 103–66, amended section 1612(b) of the Act to exclude from income any hostile fire pay received in or after October 1993.

Current regulations do not reflect the exclusion from income of hostile fire pay for eligible individuals, but hostile fire pay has been excluded under SSI operating procedure since October 1, 1993. Moreover, under these

instructions, such pay has been excluded in determining the income of ineligible spouses and parents whose income is deemed to eligible individuals.

In addition to adding to the regulations the statutorily required exclusion of hostile fire pay from an eligible individual's income, we have included the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. The new inclusion reflects the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances. By specifically singling out hostile fire pay for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. The statutory exclusion of hostile fire pay would have little meaning if not applied to ineligible spouses and parents since, as noted above, it is unlikely that an active member of the uniformed services would be eligible for SSI.

Impairment-Related Work Expenses

Impairment-related work expenses (IRWE) are expenses for items or services which are directly related to enabling a person with a disability to work and which are necessarily incurred by that individual because of a physical or mental impairment as explained at regulations §§ 404.1576 and 416.976.

Prior to December 1, 1990, in determining countable income, an individual's IRWE were deducted from his/her earned income once eligibility was established without using this exclusion. Effective December 1, 1990, section 5033 of Public Law 101–508 amended section 1612(b)(4)(B)(ii) of the Act and liberalized the IRWE exclusion. The legislation allows an individual to use the IRWE exclusion to establish eligibility.

Regulations at § 416.1112(c)(6) have been revised to implement changes enacted by section 5033 of Public Law 101–508.

These regulatory revisions were published in the Federal Register on August 12, 1994, at 59 FR 41400–41405.

Regulations at § 416.1161(a) list the types of income that are excluded from the income of an ineligible spouse and ineligible parent for deeming purposes. IRWE are not included in this list, but IRWE have been excluded from the income of ineligible spouses and ineligible parents under SSI operating procedures since 1990.

We have added to the regulations the current operating procedure which is to exclude IRWE when determining the countable income of an ineligible spouse or ineligible parent for deeming purposes. By specifically singling out IRWE for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. These regulations reflect the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances.

Interest and Appreciation in Value of Excluded Burial Funds and Burial Space Purchase Agreements

Effective November 1, 1982, section 185 of Public Law 97–248 amended the Act to provide that any interest earned on excluded burial funds and any appreciation in the value of excluded burial arrangements left to accumulate, may be excluded from income by regulation. Effective April 1, 1990, section 8013 of Public Law 101–239 amended the Act to provide that interest earned on the value of agreements representing the purchase of excluded burial spaces is excluded from income if left to accumulate.

Regulations at § 416.1124(c)(9) implement the exclusion of interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements, effective November 1, 1982. Regulations at § 416.1124(c)(15) implement the exclusion of any interest earned on the value of agreements representing the purchase of excluded burial spaces, effective April 1, 1990.

Regulations at § 416.1161(a) (relating to the treatment of income of an ineligible spouse or ineligible parent) do not apply these exclusions for purposes of deeming income, but both types of interest and appreciation have been excluded from the income of ineligible spouses and ineligible parents under SSI operating procedure.

We have added to the regulations the current operating procedure which is to exclude interest on burial funds, appreciation in the value of burial arrangements, and interest on the value of burial space purchase agreements, that are excluded from resources, when determining the countable income of an ineligible spouse or ineligible parent. These regulations reflect the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances. By specifically singling out these monies for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual.

We have made a technical change to conform the language of § 416.1124(c)(9) to a prior policy change. Effective July 11, 1990, changes related to the SSI burial fund exclusion were published in the Federal Register at 55 FR 28373–28377. As a result of these changes, regulations at § 416.1231(b)(1) were amended to require that excluded burial funds be kept separate from all other resources not intended for the burial of the individual or spouse. Furthermore, § 416.1231(b)(7) was revised to provide that interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements are excluded from resources if left to accumulate and become part of the separate burial fund.

Current regulations at § 416.1124(c)(9) provide that we will not count as income interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become part of the separately identifiable burial fund. We have conformed this regulation to the prior regulatory change requiring the burial fund to be separate from other nonburial-related assets and not merely separately identifiable.

These regulations were published in the Federal Register (60 FR 62356) as a notice of proposed rulemaking (NPRM) on December 6, 1995. Interested parties were given 60 days to submit comments. Public comments were received from an association of funeral directors which supported the proposed regulations. We are, therefore, adopting the regulations essentially as proposed.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations will impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 96.006–Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and Recordkeeping Requirements, Supplemental Security Income (SSI).

Approved: September 6, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, part 416, subpart K, of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Section 416.1124 is amended by removing the ''and'' at the end of paragraph (c)(17) and the period at the end of paragraph (c)(18), by adding ''; and'' at the end of paragraph (c)(18), by revising paragraphs (c)(7) and (c)(9) and adding new paragraph (c)(19) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) * * *

(7) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25-year residency requirement for receipt of such payments in effect prior to January 1, 1983; and was eligible for SSI;

* * * * *

(9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become a part of the separate burial fund. (See § 416.1231 for an explanation of the exclusion of burial assets.) This exclusion from income applies to interest earned on burial funds or appreciation in the value of excluded burial arrangements which occur beginning November 1, 1982, or the date you first become eligible for SSI benefits, if later;

* * * * *

(19) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310.

3. Section 416.1161 is amended by removing the ''and'' at the end of paragraph (a)(21), and removing the period at the end of paragraph (a)(22) and adding a semi-colon in its place, and by revising paragraph (a)(12) and adding new paragraphs (a)(23), (a)(24) and (a)(25) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(a) * * *

(12) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25-year residency requirement for receipt of such payments in effect prior to January 1, 1983; and was eligible for SSI;

* * * * *

(23) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

(24) Impairment-related work expenses, as described in 20 CFR 404.1576, incurred and paid by an ineligible spouse or parent, if the ineligible spouse or parent receives disability benefits under title II of the Act; and

(25) Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which are left to accumulate and become part of separate burial funds, and interest accrued on and left to accumulate as part of the value of agreements representing the purchase of excluded burial spaces (see § 416.1124(c) (9) and (15)).

[FR Doc. 96–24277 Filed 9–23–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N–0481]

RIN 0910–AA23

Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the regulation authorizing a health claim on the relationship between folic acid and neural tube defects on the labels and in the labeling of dietary supplements that became final by operation of law. The agency has replaced this revoked regulation with one that it adopted in a final rule that published in the Federal Register of March 5, 1996 (61 FR 8752).

EFFECTIVE DATE: October 8, 1996.

FOR FURTHER INFORMATION CONTACT: Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS–175), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5375.

SUPPLEMENTARY INFORMATION:

I. Background

The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535) amended the Federal Food, Drug, and Cosmetic Act (the act) to give the Secretary of the Department of Health and Human Services (the Secretary), and by delegation FDA, the authority to issue regulations authorizing health claims on the labels and in the labeling of foods. Section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)) provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with procedures and standards established under section 403(r)(3) and (r)(5)(D) of the act.

The 1990 amendments also directed the Secretary to determine through rulemaking whether claims regarding 10 nutrient-disease relationships met the

requirements of the act. The relationship of folic acid and neural tube defects was among those 10 topics (section 3(b)(1)(A)(x) of the 1990 amendments).

A. The 1991 Proposed Rule

In the Federal Register of November 27, 1991 (56 FR 60537), FDA proposed to not authorize a health claim on folic acid and neural tube defects. The agency tentatively concluded that there was not significant scientific agreement, based on the totality of publicly available scientific evidence, that such a claim would be valid. Thus, the standard that the act established for health claims for conventional foods, which FDA had proposed, under section 403(r)(5)(D), as the standard for health claims for dietary supplements, had not been met.

B. The Public Health Service Recommendation

In September 1992, following the availability of significant new data, the Public Health Service (PHS) issued a recommendation that all women of childbearing age in the United States who are capable of becoming pregnant should consume 0.4 milligram (mg) of folic acid per day for the purpose of reducing their risk of having a pregnancy affected with spina bifida or other neural tube defects. The recommendation was based on data suggesting that folic acid, when given at a high dose (4 mg), can reduce the risk of recurrence of neural tube defects and on studies that used multivitamins containing folic acid at dose levels from 0 to 1,000 micrograms per day. The PHS recommendation identified approaches and identified outstanding issues, including the recommended intake of folate, the potential role of other nutrients in reducing the risk of neural tube defects, safety concerns, and the ''folate-preventable'' fraction of neural tube defects.

C. The Dietary Supplement Act of 1992

In October 1992, the Dietary Supplement Act of 1992 (the DS act) was enacted. This statute imposed a moratorium on FDA's implementation of the 1990 amendments with respect to dietary supplements until December 15, 1993. The DS act directed FDA to issue proposed rules to implement the 1990 amendments with respect to dietary supplements by June 15, 1993, and to issue final rules based on these proposals by December 31, 1993. The DS act also amended the so-called ''hammer'' provision of the 1990 amendments, section 3(b)(2) of the 1990 amendments, to provide that if the agency did not meet the established December 31, 1993, timeframe for issuance of final rules, the proposed regulations would be considered final regulations.

D. The 1993 Final Rules for Health Claims for Food in Conventional Food Form

In the Federal Register of January 6, 1993 (58 FR 2606), FDA published a final rule in which it decided not to authorize a health claim for folic acid and neural tube defects. However, the agency reaffirmed its support of the PHS recommendation that all women of childbearing age in the United States who are capable of becoming pregnant should consume 0.4 mg of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other neural tube defects. The agency noted, however, that unresolved questions about the safe use of folate remained. The agency concluded that it could not authorize a health claim until these questions were resolved. Because of the DS act, FDA took no final action with respect to the use of a health claim on folic acid and neural tube defects on dietary supplements.

E. The 1993 Proposal to Authorize a Health Claim on Folic Acid and Neural Tube Defects

In the Federal Register of October 14, 1993 (58 FR 53254), FDA published a proposed rule to authorize the use of a health claim about the relationship of folate and neural tube defects on the labels of foods in conventional food form and dietary supplements. FDA tentatively concluded, based on its discussions with an advisory committee, that it could ensure the safe use of folate. FDA provided 60 days for comment on this proposed action. The comment period closed on December 13, 1993.

F. The 1994 Final Rule

Section 3(b)(2) of the 1990 amendments, as amended by section 202(a)(2)(B)(ii) of the DS act, provides that if the Secretary does not issue final regulations on any of the health claims applicable to dietary supplements in a timely manner, the proposed regulations shall be considered final regulations but not until December 31, 1993. Because FDA was unable to publish a final rule by December 31, 1993, in the proceeding instituted in October of 1993, FDA published a document in the Federal Register of January 4, 1994 (59 FR 433), announcing that the regulation that it had proposed in October 1993 on folate and neural tube defects was considered to be a final regulation for dietary supplements by operation of law, effective July 1, 1994.

This document did not conclude the rulemaking begun in October of 1993, however. Rather, the January 4, 1994, document was part of a separate proceeding that is compelled under section 3(b)(2) of the 1990 amendments (see H. Rept. 101–538, 101st Cong., 2d Sess. 18 and 136 Congressional Record 5842 on the effect of this ''hammer'' provision).

In the January 4, 1994, document FDA stated that the rulemaking that it instituted in October of 1993 was ongoing, and that it intended to issue a final rule that would resolve the issues in that ongoing proceeding. FDA issued that final rule on March 5, 1996 (61 FR 8752).

In the Federal Register of March 5, 1996 (61 FR 8750), FDA proposed to withdraw the regulation that became final by operation of law on January 4, 1994 (the January 4, 1994, regulation). FDA tentatively found that this action is in the best interests of consumers, manufacturers, and regulatory officials for several reasons.

The agency stated that the January 4, 1994, regulation did not have the benefit of public comment, and that it reflects FDA's initial views on the folic acid/neural tube defects health claim and what it should say. FDA tentatively found from the comments received in response to the folic acid/neural tube defects health claim proposal that the January 4, 1994, regulation did not adequately address several issues related to this health claim. Because the regulation included in the final rule published in the March 5, 1996, issue of the Federal Register addressed the comments that the agency received and included changes that the agency made in response to those comments, FDA tentatively found that the March 5, 1996, regulation is better able to implement the act than the January 4, 1994, regulation, and that it provides for a more useable and scientifically valid health claim.

FDA tentatively found that replacing the January 4, 1994, regulation with the regulation included in the final rule would not result in any hardship to manufacturers who have relied on the January 4, 1994, regulation. The regulation in the March 5, 1996, final rule in most respects was consistent with the January 4, 1994, regulation. The only differences were those modifications that the agency made to shorten the claim and to provide more flexibility to those who decide to use it on their labels or in their labeling.

FDA gave interested persons 30 days to comment on its proposal to withdraw

the January 4, 1994, regulation. It also proposed to make any final rule that issued in this proceeding effective on the date of its publication. FDA received one comment that addressed this proposed action. This comment fully supported the agency's proposal.

II. Environmental Impact

In the March 5, 1996 (61 FR 8750 at 8751), proposal FDA stated that it had determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. FDA received no comments on this conclusion. Therefore, FDA restates it in this document.

III. Analysis of Other Impacts

In the March 5, 1996 (61 FR 8750 at 8751), proposal FDA announced that it had fully assessed the effects of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354) and found that it was fully consistent with the Executive Order, and that it will not have a significant impact on a substantial number of small entities. The agency received no comments on these conclusions and consequently is restating them in this document.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, § 101.79 *Health claims; folate and neural tube defects* (as published in the Federal Register of January 4, 1994 (59 FR 434), which became final by operation of law, is removed. FDA has replaced the January 4, 1994, regulation with a regulation that appeared in the Federal Register of March 5, 1996 (61 FR 8779), and is currently codified in the 1996 edition of Title 21 of the Code of Federal Regulations (pp. 131–134).

This document is issued under sections 4, 5, and 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, and 1455); and sections 201, 301, 402, 403, 409, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C, 321, 331, 342, 343, 348, and 371).

Dated: September 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–24223 Filed 9–23–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 33

[Public Notice 2425]

Fishermen's Protective Act Guaranty Fund Procedures

AGENCY: Department of State.

ACTION: Direct final rule.

SUMMARY: The Department of State issues this direct final rule to revise the administration of the Fishermen's Guaranty Fund under section 7 of the Fishermen's Protective Act of 1967, as amended (the Act). These revisions are made in partial fulfillment of the Department's commitment that certain regulations would be modified or eliminated as part of the President's Regulatory Reinvention Initiative. The revisions are also need to reflect the recent reauthorization of the Fishermen's Guaranty Fund, as well as amendments related to fees charged for participation the Guaranty Fund, and to reflect changes in the criteria for claims to be eligible for compensation under the Act.

This revision provides a single set of guidelines for compensation.

EFFECTIVE DATE: This action is effective January 23, 1997, unless notice is received on or before November 25, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Send comments to Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation, Room 7820, U.S. Department of State, Washington, DC 20520–7818.

FOR FURTHER INFORMATION CONTACT: Stetson Tinkham, Office of Marine Conservation, (202) 647–3941.

SUPPLEMENTARY INFORMATION: Section 7 of the Act established the Guaranty Fund, and Section 408 of Public Law 99–659, November 14, 1986, transferred the administration of the Fund from the Department of Commerce to the Department of State, effective October 1, 1986. The Fishermen's Guaranty Fund regulations formerly appeared as Department of Commerce regulations at 50 CFR Part 258.

The Guaranty Fund compensates U.S. fishing vessel owners who have entered into guaranty agreements for certain losses caused by the seizure and detention of their vessels by foreign countries. Losses covered by the Guaranty Fund include: confiscation, spoilage, damage, lost fishing time, and other incidental costs. Fees for these agreements historically have paid about 60 percent of claims; about 40 percent of claims have been paid from direct appropriations. To implement this rule, the Department of State does not intend to seek annual direct appropriations, but will operate the Fund based on fees collected from participants and on funds which remain available from prior year balances. A separate fee notice will be published for each fiscal year. This direct final rule clarifies the procedure for submission of claims, the processing of guaranty agreement applications, and the computations involved in adjudicating those claims.

The Secretary of State also administers a separate program, the Fishermen's Protective Fund, under Section 3 of the Act. Under the Fishermen's Protective Fund, vessel owners may apply for reimbursement of fines, license fees, registration fees, or any other direct charge imposed by a foreign country to secure the release of a seized vessel. Claims under the Protective Fund are paid from direct appropriations.

The publication of this Department of State direct final rule was delayed pending reauthorization of the Fishermen's Guaranty Fund program. Title IV of Public Law 104–43 amended and reauthorized the program on November 3, 1995. Other legislative changes, such as the change in the U.S. position on the international law respecting highly migratory species, effective upon the President's signing of Public Law 101–627, and other measures in Public Law 104–43 dealing with high seas fishing have been taken into account in this direct final rule.

The method of computing compensation of lost fishing time is standardized. Depreciated replacement cost is made the standard compensation basis for capital equipment other than vessels. The standard compensation basis for vessels remains market value.

This rule will be open for public comment for a period of sixty (60) days following publication. Unless adverse comment is received within that period, the rule will become final thirty days after the publication of a separate ''confirmation notice'' at the close of the comment period. That confirmation notice will be accompanied by a notice establishing the fee for participation in the Fishermen's Guaranty Fund for FY 1997.

This action is not subject to Executive Order 12866 but has been reviewed to ensure consistency with the overall policies and purposes of that order. The action creates no unfunded mandates on State, local, and tribal governments, or on the private sector, nor does it require

initial or a final regulatory flexibility analysis under the Regulatory Flexibility Act.

The rule imposes no new collection of information requirements for the purposes of the Paperwork Reduction Act. It continues existing requirements which have been approved by the Office of Management and Budget under Control Number 0648–0095.

This rule is being done as a direct final rule because the rule involves changes to a program providing a claims benefit to certain members of the public. These changes are designed to ease the process of applying for these funds. We believe they will be non-controversial and will not engender adverse comment. For these reasons, notice and comment is not required under 5 U.S.C. 553(a)(2), and in any case that good cause exists that notice and public procedures are unnecessary under 5 U.S.C. 553(b)(3)(B). In order to provide some opportunity for public input, however, we have chosen to use the direct final format with a 60 day period for comment.

List of Subjects in 22 CFR Part 33

Administrative practice and procedure, Claims, Fisheries, Fishing vessels, Penalties, Seizures and forfeitures.

22 CFR part 33 is revised to read as follows:

PART 33—FISHERMEN'S PROTECTIVE ACT GUARANTY FUND PROCEDURES UNDER SECTION 7

Sec.

Authority: 22 U.S.C. 1977.

§ 33.1 Purpose.

These rules clarify procedures for the administration of Section 7 of the Fishermen's Protective Act of 1967. Section 7 of the Act establishes a Fishermen's Guaranty Fund to reimburse owners and charterers of United States commercial fishing vessels for certain losses and costs caused by the seizure and detention of their vessels by foreign countries under certain claims to jurisdiction not recognized by the United States.

§ 33.2 Definitions.

For the purpose of this part, the following terms mean:

Act. The Fishermen's Protective Act of 1967 (22 U.S.C. 1971 *et seq.*).

Capital equipment. Equipment or other property which may be depreciated for income tax purposes.

Depreciated replacement costs. The present replacement cost of capital equipment after being depreciated on a straight line basis over the equipment's depreciable life, which is standardized at ten years.

Downtime. The time a vessel normally would be in port or transiting to and from the fishing grounds.

Expendable items. Any property, excluding that which may be depreciated for income tax purposes, which is maintained in inventory or expensed for tax purposes.

Fund. The Fishermen's Guaranty Fund established in the U.S. Treasury under section 7(c) of the Act (22 U.S.C. 1977(c)).

Market value. The price property would command in a market, at the time of property loss, assuming a seller willing to sell and buyer willing to buy.

Other direct charge. Any levy which is imposed in addition to, or in lieu of any fine, license fee, registration fee, or other charge.

Owner. The owner or charterer of a commercial fishing vessel.

Secretary. The Secretary of State or the designee of the Secretary of State.

Seizure. Arrest of a fishing vessel by a foreign country for allegedly illegal fishing.

U.S. fishing vessel. Any private vessel documented or certified under the laws of the United States as a commercial fishing vessel.

§ 33.3 Eligibility.

Any owner or charterer of a U.S. fishing vessel is eligible to apply for an agreement with the Secretary providing for a guarantee in accordance with section 7 of the Act.

§ 33.4 Applications.

(a) *Applicant.* An eligible applicant for a guaranty agreement must:

(1) Own or charter a U.S. fishing vessel; and

(2) Submit with his application the fee specified in § 33.6 below.

(b) *Applicaton forms.* Application forms may be obtained by contacting the Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7820, U.S. Department of State, Washington, DC 20520–7818; Telephone 202–647–3941.

(c) *Where to apply.* Applications must be submitted to the Director, Office of marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7820, U.S. Department of State, Washington, DC 20520–7818.

(d) *Applicaton approval.* Application approval will be by execution of the guaranty agreement by the Secretary or by the Secretary's designee.

§ 33.5 Guaranty agreements.

(a) *Period in effect.* Agreements are effective for a Fiscal Year beginning October 1 and ending on the next September 30. Applications submitted after October 1 are effective from the date the application and fee are mailed (determined by the postmark) through September 30.

(b) *Guaranty agreement transfer.* A guaranty agreement may, with the Secretary's prior consent, be transferred when a vessel which is the subject of a guaranty agreement is transferred to a new owner if the transfer occurs during the agreement period.

(c) *Guaranty agreement renewal.* A guaranty agreement may be renewed for the next agreement year by submitting an application form with the appropriate fee for the next year in accordance with the Secretary's annually published requirements regarding fees. Renewals are subject to the Secretary's approval.

(d) *Provisions of the agreement.* The agreement will provide for reimbursement for certain losses caused by foreign countries' seizure and detention of U.S. fishing vessels on the basis of claims to jurisdiction which are not recognized by the United States. Recent amendments to the Magnuson Fishery Conservation and Management Act (16 U.S.C. (1801 *et seq.*) assert U.S. jurisdiction over highly migratory species of tuna in the U.S. exclusive economic zone (EEZ). Accordingly, as a matter of international law, the United States now recognizes other coastal states' claims to jurisdiction over tuna in their EEZ'S. This change directly affect certification of claims filed under the Fishermen's Protective Act. Participants are advised that this means that the Department will no longer certify for payment claims resulting from the seizure of a U.S. vessel while such vessel was fishing for tuna within the exclusive economic zone of another country in violation of that country's laws. Claims for detentions or seizures based on other claims to jurisdiction not recognized by the United States, or on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the

United states, may still be certified by the Department.

§ 33.6 Fees.

(a) *General.* Fees provide for administrative costs and payment of claims. Fees are set annually on the basis of past and anticipated claim experience. The annual agreement year for which fees are payable starts on October 1 and ends on September 30 of the following year.

(b) *Amount and payment.* The amount of each annual fee or adjusted fee will be established by the Office Director of the Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, by publication of a notice in the Federal Register. Each notice will establish the amount of the fee, when the fee is due, when the fee is payable, and any special conditions surrounding extension of prior agreements or execution of new agreements. Unless otherwise specified in such notices, agreement coverage will commence with the postmarked date of the fee payment and application.

(c) *Adjustment and refund.* Fees may be adjusted at any time to reflect actual seizure and detention experience for which claims are anticipated. Failure to submit adjusted fees will result in agreement termination as of the date the adjusted fee is payable. No fees will be refunded after an agreement is executed by the Secretary.

(d) *Disposition.* All fees will be deposited in the Fishermen's Guaranty Fund. They will remain available without fiscal year limitation to carry out section 7 of the Act. Claims will be paid from fees and from appropriated funds, if any. Fees not required to pay administrative costs or claims may be invested in U.S. obligations. All earnings will be credited to the Fishermen's Guaranty Fund.

§ 33.7 Conditions for claims.

(a) Unless there is clear and convincing credible evidence that the seizure did not meet the requirements of the Act, payment of claims will be made when:

(1) A covered vessel is seized by a foreign country under conditions specified in the Act and the guaranty agreement; and

(2) The incident occurred during the period the guaranty agreement was in force for the vessel involved.

(b) Payments will be made to the owner for:

(1) All actual costs (except those covered by section 3 of the Act or reimbursable from some other source) incurred by the owner during the seizure or detention period as a direct result thereof, including:

(i) Damage to, or destruction of, the vessel or its equipment; or

(ii) Loss or confiscation of the vessel or its equipment; and

(iii) Dockage fees or utilities;

(2) The market value of fish or shellfish caught before seizure of the vessel and confiscated or spoiled during the period of detention; and

(3) Up to 50 percent of the vessel's gross income lost as a direct result of the seizure and detention.

(c) The exceptions are that no payment will be made from the Fund for a seizure which is:

(1) Covered by any other provision of law (for example, fines, license fees, registration fees, or other direct charges payable under section 3 of the Act);

(2) Made by a country at war with the United States;

(3) In accordance with any applicable convention or treaty, if that treaty or convention was made with the advice and consent of the Senate and was in force and effect for the United States and the seizing country at the time of the seizure;

(4) Which occurs before the guaranty agreement's effective date or after its termination;

(5) For which other sources of alternative reimbursement have not first been fully pursued (for example, the insurance coverage required by the agreement and valid claims under any law);

(6) For which material requirements of the guaranty agreement, the Act, or the program regulations have not been fully fulfilled; or

(7) In the view of the Department of State occurred because the seized vessel was undermining or diminishing the effectiveness of international conservation and management measures recognized by the United States, or otherwise contributing to stock conservation problems pending the establishment of such measures.

§ 33.8 Claim procedures.

(a) *Where and when to apply.* Claims must be submitted to the Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7820, U.S. Department of State, Washington, DC 20520–7818. Claims must be submitted within ninety (90) days after the vessel's release. Requests for extension of the filing deadline must be in writing and approved by the Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs.

(b) *Contents of claim.* All material allegations of a claim must be supported by documentary evidence. Foreign language documents must be accompanied by an authenticated English translation. Claims must include:

(1) The captain's sworn statement about the exact location and activity of the vessel when seized;

(2) Certified copies of charges, hearings, and findings by the government seizing the vessel;

(3) A detailed computation of all actual costs directly resulting from the seizure and detention, supported by receipts, affidavits, or other documentation acceptable to the Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs;

(4) A detailed computation of lost income claimed, including:

(i) The date and time seized and released;

(ii) The number of miles and running time from the point of seizure to the point of detention;

(iii) The total fishing time lost (explain in detail if lost fishing time claimed is any greater than the elapsed time from seizure to the time required after release to return to the point of seizure);

(iv) The tonnage of catch on board at the time of seizure;

(v) The vessel's average catch-per-day's fishing for the three calendar years preceding the seizure;

(vi) The vessel's average downtime between fishing trips for the three calendar years preceding the seizure; and

(vii) The price-per-pound for the catch on the first day the vessel returns to port after the seizure and detention unless there is a pre-negotiated price-per-pound with a processor, in which case the pre-negotiated price must be documented; and

(5) Documentation for confiscated, damaged, destroyed, or stolen equipment, including:

(i) The date and cost of acquisition supported by invoices or other acceptable proof of ownership; and

(ii) An estimate from a commercial source of the replacement or repair cost.

(c) *Burden of proof.* The claimant has the burden of proving all aspects of the claim, except in cases of dispute over the facts of the seizure where the claimant shall have the presumption that the seizure was eligible unless there is clear and convincing credible evidence that the seizure did not meet the eligibility standards of the Act.

§ 33.9 Amount of award.

(a) *Lost fishing time.* Compensation is limited to 50 percent of the gross

income lost as a direct result of the seizure and detention, based on the value of the average catch-per-day's fishing during the three most recent calendar years immediately preceding the seizure as determined by the Secretary, based on catch rates on comparable vessels in comparable fisheries. The compensable period for cases of seizure and detention not resulting in vessels confiscation is limited to the elapsed time from seizure to the time after release when the vessel could reasonably be expected to return to the point of seizure. The compensable period in cases where the vessel is confiscated is limited to the elapsed time from seizure through the date of confiscation, plus an additional period to purchase a replacement vessel and return to the point of seizure. In no case can the additional period exceed 120 days.

(1) Compensation for confiscation of vessels, where no buy-back has occurred, will be based on market value which will be determined by averaging estimates of market value obtained from as many vessel surveyors or brokers as the Secretary deems practicable;

(2) Compensation for capital equipment other than vessel, will be based on depreciated replacement cost;

(3) Compensation for expendable items and crew's belongings will be 50 percent of their replacement costs; and

(4) Compensation for confiscated catch will be for full value, based on the price-per-pound.

(b) *Fuel expense.* Compensation for fuel expenses will be based on the purchase price, the time required to run to and from the fishing grounds, the detention time in port, and the documented fuel consumption of the vessel.

(c) *Stolen or confiscated property.* If the claimant was required to buy back confiscated property from the foreign country, the claimant may apply for reimbursement of such charges under section 3 of the Act. Any other property confiscated is reimbursable from this Guaranty Fund. Confiscated property is divided into the following categories:

(1) Compensation for confiscation of vessels, where no buy-back has occurred, will be based on market value which will be determined by averaging estimates of market value obtained from as many vessel surveyors or brokers as the Secretary deems practicable;

(2) Compensation for capital equipment other than a vessel, will be based on depreciated replacement cost;

(3) Compensation for expendable items and crew's belongings will be 50 percent of their replacement cost; and

(4) Compensation for confiscated catch will be for full value, based on the price-per-pound.

(d) *Insurance proceeds.* No payments will be made from the Fund for losses covered by any policy of insurance or other provisions of law.

(f) *Appeals.* All determinations under this section are final and are not subject to arbitration or appeal.

§ 33.10 Payments.

The Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, will pay the claimant the amount calculated under § 33.9. Payment will be made as promptly as practicable, but may be delayed pending the appropriation of sufficient funds, should fee collections not be adequate to sustain the operation of the Fund. The Director shall notify the claimant of the amount approved for payment as promptly as practicable and the same shall thereafter constitute a valid, but non-interest bearing obligation of the Government. Delays in payments are not a direct consequence of seizure and detention and cannot therefore be construed as increasing the compensable period for lost fishing time. If there is a question about distribution of the proceeds of the claim, the Director may request proof of interest from all parties, and will settle this issue.

§ 33.11 Records.

The Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs will have the right to inspect claimants' books and records as a precondition to approving claims. All claims must contain written authorization of the guaranteed party for any international, federal, state, or local governmental Agencies to provide the Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs any data or information pertinent to a claim.

§ 33.12 Penalties.

Persons who willfully make any false or misleading statement or representation to obtain compensation from the Fund are subject to criminal prosecution under 22 U.S.C. 1980(g). This provides penalties up to $25,000 or imprisonment for up to one year, or both. Any evidence of criminal conduct will be promptly forwarded to the United States Department of Justice for action. Additionally, misrepresentation, concealment, or fraud, or acts intentionally designed to result in seizure, may void the guaranty agreement.

Dated: August 13, 1996.

Eileen Claussen,

Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

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BILLING CODE 4710–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 91

[OJP No. 1099]

RIN 1121–AA41

Grants Program for Indian Tribes

AGENCY: Office of Justice Programs, Justice.

ACTION: Interim rule.

SUMMARY: This document announces an interim rule and requests comments on provisions that implement the Violent Offender Incarceration and Truth-In-Sentencing Grants Program for Indian Tribes as required by Section 114 of the Fiscal Year 1996 Omnibus Consolidated Rescissions and Appropriations Act.

DATES: This rule becomes effective September 24, 1996. All comments must be received by October 24, 1996.

ADDRESSES: All comments should be addressed to Larry Meachum, Director, the Corrections Program Office, Office of Justice Programs, 633 Indiana Ave., NW., 4th Floor, Washington, DC, 20531.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen P. Amos, the Corrections Program Office at (202) 848–6325.

SUPPLEMENTARY INFORMATION:

Overview of the Violent Offender Incarceration and Truth-In-Sentencing Grants Program for Indian Tribes

Section 114 of the Fiscal Year 1996 Omnibus Consolidated Rescissions and Appropriations Act, Public Law 104–134 (April 26, 1996) (''Appropriations Act'') amends the Violent Crime Control and Law Enforcement Act of 1994, Subtitle A of Title II, Public Law 103–322, 108 Stat. 1796 (September 13, 1994), as amended, codified at 42 U.S.C. 13701 et seq., to authorize a reservation of funds for the specific purpose of allowing the Attorney General to make discretionary grants to Indian tribes. Specifically, from amounts appropriated to implement Subtitle A of Title II, the Appropriations Act allocates 0.3 percent in each of fiscal years 1996 and 1997 and 0.2 percent in each of fiscal years

1998, 1999 and 2000, for discretionary grants to Indian tribes. Appropriated funds for this grant program in fiscal year 1996 total $1.2 million. Awarded grants must be used for purposes of constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

Administrative Requirements

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Assistant Attorney General, Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed this Interim Rule and, by approving it, certifies that the Interim Rule will not have a significant economic impact on a substantial number of small entities. The Assistant Attorney General, Office of Justice Programs determined: (1) Interim Rule provides the outline of a program governing the award of grants to Indian Tribes; and (2) the award of such grants impose no requirements on small businesses or on other small entities, and as such, the Interim Rule would be in accordance with the Regulatory Flexibility Act.

National Environmental Policy Act of 1969

This regulation has been reviewed in accordance with the Office of Justice Program's Procedures for Implementing the National Environmental Policy Act, 28 CFR Part 61. The Assistant Attorney General for the Office of Justice Programs has determined that this regulation does not constitute a major federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets and therefore is not a major rule, as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the public sector, of $100,000,000 or more in any one year and will not significantly or uniquely affect small governments.

List of Subjects in 28 CFR Part 91

Grant Programs—Law, Indians—tribal government.

For the reasons set out in the preamble, Title 28, Part 91, of the Code of Federal Rregulations is proposed to be amended as follows:

PART 91—GRANTS FOR CORRECTIONAL FACILITIES

1. The authority citation for part 91 is revised to read as follows:

Authority: Sec. 20105 of Subtitle A, Title II of the Violent Crime Control and Law Enforcement Act of 1994, unless otherwise noted.

2. A new Subpart C is added to read as follows:

Subpart C—Violent Offender Incarceration and Truth-in-Sentencing Grant Programs for Indian Tribes

Sec.

Authority: 42 U.S.C. 13701 et seq. as amended by Pub.L. 104–134.

§ 91.21 Purpose.

This part sets forth requirements and procedures to award grants to Indian Tribes for purposes of constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

§ 91.22 Definitions.

(a) *The Act* means the Violent Crime Control and Law Enforcement Act of 1994, Subtitle A of Title II, Public Law 103–322, 108 Stat. 1796 (September 13, 1994) as amended by the Fiscal Year 1996 Omnibus Consolidated Rescissions and Appropriations Act, Public Law 104–134 (April 26, 1996), codified at 42 U.S.C. 13701 *et. seq.*

(b) *Assistant Attorney General* means the Assistant Attorney General for the Office of Justice Programs.

(c) *Tribal lands* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of way running through the same.

(d) *Indian Tribe* means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103–454, 108 Stat. 4791, and which performs law enforcement functions as determined by the Secretary of the Interior.

(e) *Construct jails* means constructing, developing, expanding, modifying, or renovating jails and other correctional facilities.

§ 91.23 Grant authority.

(a) The Assistant Attorney General may make grants to Indian tribes for programs that involve constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

(b) Applications for grants under this program shall be made at such times and in such form as may be specified by the Assistant Attorney General. Applications will be evaluated according to the statutory requirements of the Act and programmatic goals.

(c) Grantees must comply with all statutory and program requirements applicable to grants under this program.

§ 91.24 Grant distribution.

(a) From the amounts appropriated under section 20108 of the Act to carry out sections 20103 and 20104 of the Act, the Assistant Attorney General shall reserve, to carry out this program—

(1) 0.3 percent in each fiscal years 1996 and 1997; and

(2) 0.2 percent in each of fiscal years 1998, 1999 and 2000.

(b) From the amounts reserved under paragraph (a) of this section, the Assistant Attorney General may exercise discretion to award or supplement grants to such Indian Tribes and in such amounts as would best accomplish the purposes of the Act.

Dated: September 17, 1996.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 96–24324 Filed 9–23–96; 8:45 am]

BILLING CODE 4410–18–U

Office of Community Oriented Policing Services

28 CFR Part 92

RIN 1105–AA47

FY 1996 Police Corps Program

AGENCY: Office of the Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule establishes a framework for the Police Corps, authorized by the Police Corps Act, Title XX, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994. For Fiscal Year 1996, Congress has appropriated $10 million for the operation of the Police Corps. This regulation is being published under the statutory grant of authority of the Police Corps Act to issue regulations governing the process of selection of Police Corps participants.

DATES: This interim rule is effective on September 24, 1996. All comments must be received by close of business (5:30 p.m. EST) on October 24, 1996. The length of the comment period has been limited to thirty days in order to provide States and individuals timely access to the available program funds. It would be contrary to the public interest to delay implementation of the program.

ADDRESSES: All comments should be addressed to L. Anthony Sutin, Deputy Director/General Counsel, Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont Avenue, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480, or L. Anthony Sutin, Office of Community Oriented Policing Services, at (202) 514–3750.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide guidance to States and individuals interested in applying to participate in the Police Corps. The rule addresses eligibility requirements, application criteria and procedures, and certain post-application requirements. The rule is not intended to be a comprehensive compilation of the administrative requirements of the Police Corps; the authorizing statute (42 U.S.C. 14091 *et seq.*) is quite detailed in a number of respects and those requirements and provisions are not repeated in the regulation (but are set forth in the following overview). In addition, other program requirements and procedures will be formulated by the participating States in light of their circumstances and needs.

Overview

The Police Corps is administered by the Office of the Police Corps and Law Enforcement Education (''OPCLEE''), within the Office of Community Oriented Policing Services, U.S. Department of Justice, in partnership with participating States that have submitted an approved State plan. The Police Corps awards scholarships and reimburses educational expenses to students who agree to work in a State or local police force for at least four years. Students must pursue an undergraduate or graduate degree in a course of study which, in the judgment of the State or local police force to which the participant will be assigned, includes appropriate preparation for police service. The service commitment must follow receipt of the baccalaureate degree or precede commencement of graduate studies funded by the Police Corps. Police Corps funds cover education expenses (including tuition, fees, books, supplies, transportation, room and board, and miscellaneous expenses) up to $7,500 per academic year, with a limit on total payments to any student of $30,000. Funds are paid directly by the Department of Justice to the institution of higher education, or to the participating student in reimbursement for the expenses.

Police Corps scholarship funds also are available to dependent children of law enforcement officers killed in the line of duty. These scholarships may be applied to any course of study, without any service or repayment obligation.

Police Corps participants are selected on a competitive basis by each State within the framework of this rule. Participation is open to U.S. citizens and permanent resident aliens who meet the requirements for admission as a trainee of the police agency to which he or she will be assigned. Participants also must possess the necessary mental and physical capabilities and emotional characteristics to be an effective law enforcement officer, be of good character and demonstrate sincere motivation and dedication to law enforcement and public service. Until 1999, up to 10% of Police Corps participants may be persons who have had some law enforcement experience and have demonstrated special leadership potential and dedication to law enforcement.

Service Obligation: Participants enter into a contract with OPCLEE for their four-year service commitment. Police Corps participants have all of the rights and responsibilities of the members of the police force to which they are assigned. They should be compensated at the same rate of pay and receive the same benefits as other officers of the same rank and tenure of their assigned force. If disciplinary matters, layoffs, or other circumstances preclude fulfillment of the four-year service requirement, OPCLEE will reassign the participant to an ''equivalent law enforcement service.'' If physical or emotional disability preclude completion of service; OPCLEE may substitute participation in community service. If the service obligation is not satisfactorily completed, the participant will be required to repay all Police Corps funds received, plus interest at ten percent.

Police agencies that employ Police Corps officers will receive $10,000 per participant for each year of service, or $40,000 per each participant who fulfills the four-year service obligation. However, a police agency may not receive this payment if its average size has declined by more than 2 percent since January 1, 1993, or if it has laid off officers.

State Participation: A State or territory that wishes to participate in the Police Corps must designate a lead agency that will submit a State plan to OPCLEE and administer the program in the State. The State plan must provide that the agency will work in cooperation with local law enforcement liaisons, representatives of police labor and management organizations, and other appropriate agencies to develop and implement interagency agreements. The State also must agree to advertise the availability of Police Corps funds, and make special efforts to recruit applicants from among members of all racial, ethnic or gender groups.

The State plan sets out procedures governing assignment of participants to State and local police agencies. Participants must be assigned to those geographic areas where there is the greatest need for additional personnel and where they will be used most effectively. Where consistent with those objectives, a participant should be assigned to an area near his or her home or other location of choice. No participants may be assigned to a police force the size of which has declined more than 5 percent since 1989 or which has laid off officers. Up to ten percent of participants may be assigned to the State Police.

The State plan must provide that Police Corps participants will, to the extent feasible, be assigned to community and preventive patrol.

To avoid oversubscription of the program, OPCLEE has discretion regarding the number of State plans that are approved, giving preference to those that provide law enforcement personnel to areas of greatest need.

Training: Police corps participants must attend two 8-week training sessions established by OPCLEE, following the completion of their sophomore and junior years (unless the participant entered the program after that point). Training is intended to serve as basic law enforcement training, designed to include vigorous physical and mental training to teach participants self-discipline and organizational loyalty and to impart knowledge and understanding of legal processes and law enforcement. Each participant is paid $250 per week of training by OPCLEE.

Under the authorizing statute, OPCLEE may establish and administer up to three training centers, or contract with existing State training facilities. OPCLEE is required to contract with a State facility, if the facility so requests, if OPCLEE determines that the facility offers training substantially equivalent to that called for under this provision. OPCLEE also may contract or enter into agreements with other individuals, universities, federal, state and local government agencies for training resources. OPCLEE is authorized to expend funds for effective maintenance of the training centers, including purchases of supplies, uniforms, and educational materials, and the provision of subsistence, quarters, and medical care to participants.

Request for Comment: The Office of the Police Corps and Law Enforcement Education seeks comments on any aspect of the rule.

Administrative Requirements

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Community Oriented Policing Services has determined that this Interim Rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this Interim Rule has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Director, Office of the Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services, in accordance with the Regulatory Flexibility Act, codified at 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This Interim Rule builds upon the statutory outline of a program providing scholarships and educational assistance to individuals in exchange for a commitment to serve as a law enforcement officer for four years, and the award of such scholarships or assistance imposes no requirements on small businesses or other small entities.

Paperwork Reduction Act

The information collection requirements contained in this interim rule were submitted for review and clearance to the Office of Management and Budget, as required by provisions of the Paperwork Reduction Act, 44 U.S.C. 3504(h). A clearance number of 1103–0035 has been assigned, with the clearance expiring on February 27, 1997.

List of Subjects in 28 CFR Part 92

Law Enforcement Officers, Scholarships and fellowships, Student Aid.

For the reasons set out in the preamble, 28 CFR is amended by adding Part 92 to read as follows:

PART 92—POLICE CORPS ELIGIBILITY AND SELECTION CRITERIA

Sec.

Authority: 42 U.S.C. 14091.

§ 92.1 Scope.

This subpart sets forth guidance on the eligibility for and selection to participate in the Police Corps. The Police Corps offers scholarships and educational expense reimbursements to individuals who agree to serve as a State or local police officer or sheriff's deputy for four years. In addition, Police Corps participants receive sixteen weeks of training in basic law enforcement, including vigorous physical and mental training to teach self-discipline and organizational loyalty and to impart knowledge and understanding of legal processes and law enforcement.

§ 92.2 Am I eligible to apply to participate in the Police Corps?

(a) You should consider applying to the Police Corps if you are seeking an undergraduate or graduate degree, and are willing to commit to four years of service as a member of a State or local police force. To be eligible to participate in a State Police Corps program, an individual also must:

(1) Be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States as of the date of application;

(2) Meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned if selected, including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State or local police force shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(3) Possess the necessary mental and physical characteristics to discharge effectively the duties of a law enforcement officer;

(4) Be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(5) In the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete four years of service as an officer in the State police or in a local police department within the State;

(6) In the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(7) Contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve four years as an officer in the State police or in a local police department, if an appointment is offered; and

(8) Except as provided in paragraph (a)(8)(i) of this section, be without previous law enforcement experience.

(i) Until September 13, 1999, up to ten percent of the applicants accepted into the State Police Corps program may be persons who have had some law enforcement experience and/or have demonstrated special leadership potential and dedication to law enforcement.

(b) According to the Debt Collection Procedures Act (Pub. L. 101–647 as amended), 28 U.S.C. 3201, persons who have incurred a court judgment in favor of the United States creating a lien against their property arising from a civil or criminal proceeding regarding a debt are precluded from receiving Federal funds (including Police Corps funds) until the judgment lien has been paid in full or otherwise satisfied.

(c) Educational assistance under the Police Corps Act for any course of study also is available to a dependent child of a law enforcement officer:

(1) Who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer;

(2) Who is not a participant in the Police Corps program, but

(3) Who serves in a State for which the Director has approved a Police Corps plan, and

(4) Who is killed in the course of performing policing duties.

(i) For purposes of this assistance, a dependent child means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer's death was no more than 21 years old or, if older than 21 years, was in fact dependent on the child's parents for at least one-half of the child's support (excluding educational expenses), as determined by the Director based on a review of any available documentation.

(ii) The educational assistance available under this subsection is subject to the same dollar limitations set forth in § 92.4, but carries no police service obligation, repayment contingencies, or requirement for approval of a course of study.

§ 92.3 How and when should I apply to participate in the Police Corps?

(a) The application and selection process occurs at the State level. An applicant may apply to participate in more than one State Police Corps program, provided that the applicant is prepared to commit to serve as a law enforcement officer in the State to which application is made. Application forms should be obtained from the State Police Corps agencies.

(b) Applicants may seek admission to the Police Corps either before commencement of or during the applicant's course of undergraduate or graduate study. However, acceptance into the Police Corps will be conditioned on matriculation in or acceptance for admission at a four-year institution of higher education. Specific application deadlines will be established by State Police Corps agencies.

§ 92.4 How will participants be selected from applicants?

(a) Applicants should be selected competitively based upon selection criteria developed by the State Police Corps agency pursuant to this subsection. Appropriate application materials should be developed by the State Police Corps agency to obtain the information reasonably needed to make selection and assignment decisions and to provide required information to the Director.

(b) The State Police Corps agency should develop selection criteria in consultation with local law enforcement officials, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies. Selection criteria should seek to attract highly qualified individuals with backgrounds and characteristics likely to assure effective participation in the Police Corps. Criteria should include consideration of factors bearing on the statutory eligibility requirements set forth in § 92.1, and may include (without limitation) consideration of:

(1) Scholastic record;

(2) Work experience;

(3) Extracurricular and/or community involvement;

(4) Letters of recommendation;

(5) Demonstrated interest in policing as a career.

(c) After selection, the State Police Corps agency will forward to the Director, Office of the Police Corps and Law Enforcement Education a list of persons selected for admission to the Police Corps. With respect to each person, the list should set forth:

(1) Name;

(2) Address;

(3) Social security number;

(4) Name and location of law enforcement agency to which the person has been assigned;

(5) Educational institution in which the person is enrolled or has been accepted for admission, and course of study;

(6) Date on which the person is expected to commence his/her service;

(7) Certification that the person has been found to meet the statutory selection criteria at 42 U.S.C. § 14096;

(8) A Police Corps Agreement signed by the applicant; and

(9) An itemization of the educational expenses that the person is eligible to receive through scholarship and/or reimbursement.

(i) With respect to individuals identified to receive educational assistance under § 92.2(c), the list should contain the information in paragraphs (c) (1), (2), (3), (5) and (9) of this section.

(ii) With respect to the list in the aggregate, a summary of the racial and gender distribution of the individuals.

(d) After selection, the State Policy Corps agency should notify applicants of their selection, their agency assignment, and their assignment to a training class. However, admission to the Police Corps is not final until the Police Corps Agreement has been signed both by the applicant and the Director.

§ 92.5 What educational expenses does the Police Corps cover, and how will they be paid?

(a) Educational expenses are paid either in the form of a scholarship or a reimbursement. Scholarships will be paid where Police Corps participants are currently enrolled in an approved course of study in an institution of higher education. Reimbursements will be paid to participants for educational expenses incurred prior to admission to the Police Corps. In certain circumstances, a Police Corps participant may receive a reimbursement for past expenses and a scholarship for current expenses.

(b) Requests for payment of educational expenses by a Police Corps participant should be submitted to the Director through the State Police Corps agency.

(1) Educational expenses are expenses that are directly attributable to a course of education leading to the award of either a baccalaureate or graduate degree, and may include:

(i) Tuition, in an amount billed by the institution of higher education;

(ii) Fees, in an amount billed by the institution of higher education;

(iii) Cost of books required to be purchased pursuant to the curriculum in which the candidate is enrolled;

(iv) Cost of transportation from the candidate's home to school, calculated at actual cost or the current prevailing rate for mileage reimbursement for federal travel;

(v) Cost of room and board;

(vi) Miscellaneous expenses not to exceed $250 per academic semester.

(2) A participant receiving a scholarship may submit payment requests prior to the commencement of each subsequent academic year in which he/she is enrolled in an institution of higher education.

(3) For participants currently enrolled in an institution of higher education, each payment request must be accompanied by:

(i) a certification from the institution that the participant is maintaining satisfactory academic progress;

(ii) a certification by or on behalf of the State or local police force to which the participant will be assigned that the participant's course of study includes appropriate preparation for police service.

(4) The maximum Police Corps payment per participant per academic year, whether in the form of scholarship or reimbursement, is $7,500. In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the maximum payment will be $10,000 per such calendar year.

(5) The total of all Police Corps scholarship or reimbursement payments to any one participant shall not exceed $30,000.

(6) Police Corps scholarship payments will be made directly to the institution of higher education that the student is attending. Each institution of higher education receiving a Police Corps scholarship payment shall remit to such student any funds in excess of the costs of tuition, fees, and room and board payable to the institution.

(7) Reimbursements for past expenses will be made directly to the Police Corps participant. One-quarter of the reimbursement will be made after completion of each of the four years of the participant's required service obligation.

§ 92.6 What colleges or universities can I attend under the Police Corps?

(a) The choice of institution is up to the participant, as long as the institution meets the definition of an ''institution of higher deduction.'' As defined in 20 U.S.C. 1141(a), an ''institution of higher education'' means an educational institution in any State which:

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) is legally authorized within such State to provide a program of education beyond secondary education,

(3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree,

(4) is a public or other nonprofit institution, and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary (of Education) for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of paragraphs (a) (1), (2), (4), and (5) of this section. Such term also includes a public or nonprofit educational institution in any State which, in lieu of the requirement in paragraph (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) A Police Corps scholarship only may be used to attend a four-year institution of higher education, except that:

(1) A scholarship may be used for graduate and professional study; and

(2) If a participant has enrolled in the Police Corps upon or after transfer to a four-year institution of higher education, the Director may reimburse the participant for prior educational expenses.

Dated: September 16, 1996.

Joseph E. Brann,

Director.

[FR Doc. 96–24212 Filed 9–23–96; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5614–3]

Standards of Performance for New Stationary Sources Rescission of Alternate Opacity Standard for Omaha Public Power District—Nebraska City Power Station, Nebraska City, NE

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is rescinding the alternate opacity emission limit established for the Nebraska City Power Station in Nebraska City, Nebraska, owned and operated by Omaha Public Power District (OPPD). Performance testing showed the power plant can now meet both the particulate and opacity limits set forth in the regulation; thus, an alternate opacity limit is no longer necessary. Under this rule, the opacity limit for the Nebraska City Power Station would be changed from 30 percent (with a maximum of 37 percent for not more than six minutes in any hour) to 20 percent (with a maximum of 27 percent for one six-minute period per hour).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the rule should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Commenters should also indicate whether they wish to request a public hearing on this action, including the reasons for the request and the nature of the comments which would be presented at any public hearing. If a hearing is requested, the EPA will determine whether to hold a public hearing, and will announce the time and location of any hearing in a subsequent Federal Register notice.

DATES: This action will be effective November 25, 1996 unless by October 24, 1996 adverse or critical comments are received. Comments should be submitted to Angela Ludwig at the address below.

ADDRESSES: Written comments and requests for public hearing on this action should be addressed to Angela Ludwig, Air Permits and Compliance Branch, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

Docket: Pursuant to sections 307(d)(1)(C) and (N) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1) (C) and (N), this action is subject to the procedural requirements of section 307(d). Therefore, the EPA has established a public docket for this action, Docket # A–96–31. Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental

Protection Agency, Air, Permits and Compliance Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 10460.

FOR FURTHER INFORMATION CONTACT: Angela Ludwig, Air Permits and Compliance Branch, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7411.

SUPPLEMENTARY INFORMATION: On December 23, 1971 (36 FR 24875), the EPA promulgated Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced after August 17, 1971, as Subpart D of 40 CFR Part 60, pursuant to section 111 of the CAA, 42 U.S.C. 57411. Under these provisions, the affected facility was required to conduct performance tests during its initial startup period to demonstrate compliance with opacity and other applicable standards (40 CFR 60.8). Pursuant to 40 CFR 60.11(e)(6), a source may petition the EPA for an alternate opacity limit if all other emission limits in an applicable New Source Performance Standard (NSPS) are met, and the source cannot meet the applicable opacity limit. Pursuant to 40 CFR 60.11(e)(7), the EPA will grant such a petition if the source or operator demonstrates that the affected facility and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests; that the performance tests were performed under the conditions established by the EPA; and that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard. OPPD conducted performance tests and opacity/mass correlation tests in 1981. These tests were the basis for the EPA rule, published in the Federal Register on November 24, 1981 (46 FR 57497), codified at 40 CFR 60.42(b)(3) and 60.45(g)(1)(iii), which changed the 20 percent (with a maximum of 27 percent for one six-minute period per hour) opacity limit to 30 percent (with a maximum of 37 percent for not more than six minutes in any hour) for the Nebraska City Power Station pursuant to the procedures and standards set forth at 40 CFR 60.11(e).

The Nebraska Department of Environmental Quality requested that OPPD perform tests at the Nebraska City Power Plant in June 1989, pursuant to its delegated authority to enforce the NSPS. After replacing its hot side electrostatic precipitator with a cold side electrostatic precipitator, OPPD conducted tests on June 13 and 14, 1989, to measure emissions. These tests demonstrated that the new control device was able to control the opacity of emissions below the 20 percent limit and particulate emissions below the particulate limit. On August 15, 1989, the state agency issued a revised operating permit to the OPPD facility, establishing an opacity limit of 20 percent (with a maximum of 27 percent for not more than six minutes in any hour). Nebraska has also requested that the EPA rescind the alternate limit to be consistent with the 20 percent NSPS and state operating permit limit.

Since the Nebraska City Power Station can now meet the 20 percent opacity limit (additional monitoring data collected since the 1989 performance test show that the facility continues to be capable of meeting the lower limit), the 30 percent alternate opacity limit is no longer appropriate. In addition, the preconditions for allowing the alternate opacity limits in § 60.11(e)(7) are no longer met. Therefore, the EPA is rescinding the alternate limit, and, after the effective date of this rule, the source will be required to meet the 20 percent NSPS opacity limit. The source continues to be subject to the 20 percent opacity limit in the state permit without regard to this rulemaking.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action affects only one source—Omaha Public Power District, Nebraska City Power Station, Nebraska City Nebraska. OPPD is not a small entity. Therefore, the EPA certifies that this action does not have a significant impact on a substantial number of small entities.

Under Executive Order 12866, the EPA is required to submit to the Office of Management and Budget for review proposed rules which are classified as ''significant regulatory action.'' Because this rule would require the source to meet requirements which are already applicable, by rule, to sources in this source category, and because it obligates the source to meet requirements which it must already meet under state law, the EPA has determined that the proposed rule would not be a ''significant regulatory action'' under the Executive Order.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

To the extent that the proposed rule will impose new requirements, the source is already subject to the requirements under State law. Accordingly, no additional cost to State or local governments, or to the private sector, result from this action. The EPA has also determined that this proposed action does not include a mandate that may result in estimated cost of $100 million or more to state or local governments in the aggregate or to the private sector. The EPA has determined that this proposed rule results in no additional cost to tribal governments.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Fossil-fuel-fired steam generating units, Intergovernmental relations.

Authority: Sections 111 and 301(a) of the CAA, 42 U.S.C. 7411 and 7601(a).

Dated: September 16, 1996.

Carol Browner,

Administrator.

For the reasons set forth in the preamble, subpart D of part 60 of chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601

Subpart D—[Amended]

§ 60.42 [Amended]

2. Section 60.42 is amended by removing paragraph (b)(3).

§ 60.45 [Amended]

3. Section 60.45 is amended by removing paragraph (g)(1)(iii).

[FR Doc. 96–24283 Filed 9–23–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document eliminates an outdated footnote in regulations, addressing the organization of the Office of Hearings and Appeals (OHA) and the authority delegated by the Secretary to the Director and other principal officials in OHA. The organization and authority is fully explained in the text of the regulation. This document also eliminates the words ''and Osage Indian wills'' as a limitation no longer applicable on the scope of authority of Administrative Law Judges and Interior Board of Indian Appeals to rule on probate issues from the Osage Indian Tribe.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: James P. Terry, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: (703) 235–3810.

SUPPLEMENTARY INFORMATION: This action reflects agency management in deleting nonsubstantive, outdated, and unnecessary language in a footnote relating to organization and authority of OHA, already fully described in the current text of § 4.1 of 43 CFR Part 4, Subpart A, and, similarly, in deleting nonsubstantive, outdated, and inapplicable language in § 4.1(b)(2)(ii) of 43 CFR Part 4, Subpart A. Accordingly, the Department has determined that the provisions of the Administrative Procedures Act, 5 U.S.C. 553 (b) and (d), allowing for public notice and comment and a 30-day delay in the effective date of a rule, are unnecessary and impracticable.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure.

Therefore, under the authority of the Secretary of the Interior contained in 5 U.S.C. 301, Part 4 of Title 43 of the Code of Federal Regulations, is amended as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read:

Authority: R.S. 2478, as amended, 43 U.S.C. sec 1201, unless otherwise noted.

Subpart A—General; Office of Hearings and Appeals

§ 4.1 [Amended]

2. Section 4.1 is amended by removing footnote 1 from the introductory text of the section.

3. Section 4.1(b)(2)(ii) is revised to read as follows:

§ 4.1 Scope of authority; applicable regulations.

* * * * *

(b) * * *

(2) * * *

(ii) Orders and decisions of Administrative Law Judges in Indian probate matters other than those involving estates of the Five Civilized Tribes of Indians. The Board also decides such other matters pertaining to Indians as are referred to it by the Secretary, the Director of the Office of Hearings and Appeals, or the Assistant Secretary-Indian Affairs for exercise of review authority of the Secretary. Special regulations applicable to proceedings before the Board are contained in subpart D of this part.

* * * * *

Dated: September 6, 1996.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 96–23828 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–79–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–097, Notice 02]

RIN 2127–AF90

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: In this document, NHTSA transfers most of the requirements of the Federal motor vehicle safety standard on headlamp concealment devices to the safety standard on lamps, reflective devices and associated equipment. The remaining requirements of the standard on headlamp concealment devices are rescinded. This rule adopts most of the amendments proposed in the notice of proposed rulemaking. However, instead of rescinding a requirement that both headlamp concealment devices be operated by one switch, as proposed, this notice transfers that requirement to the lighting standard. This action is part of the President's Regulatory Reinvention Initiative to make regulations easier to understand and to apply.

DATES: *Effective date.* This final rule is effective October 24, 1996.

Petitions for reconsideration. Any petitions for reconsideration of this final rule must be received no later than November 8, 1996.

ADDRESSES: Any petitions for reconsideration of this final rule should refer to the docket number and notice number cited at the beginning of this notice, and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

For technical issues: Mr. Richard Van Iderstine, Office of Vehicle Safety Standards, NPS–11, telephone (202) 366–5280, FAX (202) 366–4329.

For legal issues: Ms. Dorothy Nakama, Office of Chief Counsel, NCC–20, (202) 366–2992, FAX (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

President's Regulatory Reinvention Initiative

Pursuant to the President's March 4, 1995, directive, ''Regulatory Reinvention Initiative,'' to the heads of departments and agencies, NHTSA undertook a review of all its regulations and directives. During the course of this review, the agency identified not only those rules or portions of rules that might be deleted or rescinded but also those rules that could be consolidated to avoid duplication or be redrafted to make them easier to comprehend. In reviewing Federal Motor Vehicle Safety Standard No. 112, *Headlamp concealment devices* (49 CFR 571.112), the agency tentatively decided that a separate standard for headlamp concealment devices is not necessary since its essential provisions could be transferred to Standard No. 108, *Lamps, reflective devices, and associated equipment,* without affecting safety.

Standard No. 112

Standard No. 112 specifies requirements for headlamp concealment devices, which is defined in S3 of the standard as ''a device with its operating system and components, that provides concealment of the headlamp when it is not in use, including a movable headlamp cover and a headlamp that displaces for concealment purposes.'' Headlamp concealment devices are usually rotating or pop-up headlamp mounts that appear to be part of an uninterrupted body surface when the headlamps are not positioned for use. Only a small percentage of vehicles has ever incorporated them. More extensive use of them in the future is not anticipated since the trend toward aero-styled headlamps has reduced their role in styling.

Standard No. 112 requires that fully opened headlamp concealment devices must remain fully opened whenever there is a loss of power to or within the device and whenever any malfunction occurs in components that control or conduct power for the operation of a concealment device. The standard also has safety performance criteria to increase the safe and reliable operation of headlamp concealment devices. Means for fully opening each headlamp concealment device must be provided to guard against the possibility of a malfunction occurring in components that control or conduct power for the actuation of the concealment device. A single mechanism must be provided for actuating the headlamp concealment devices and illuminating the lights. Each headlamp concealment device must be designed such that no component of the device, other than components of the headlamp assembly, need be removed when mounting, aiming and adjusting the headlamps. Finally, within specified temperature ranges, headlamp concealment devices must fully open in three seconds after actuation of the appropriate mechanism, except in the event of a power loss.

Notice of Proposed Rulemaking

On April 11, 1996, NHTSA published a notice of proposed rulemaking (NPRM) (61 FR 16073) to transfer most of the requirements of Federal motor vehicle safety standard on headlamp concealment devices to the safety standard on lamps, reflective devices and associated equipment. The agency proposed to rescind remaining requirements of the standard on headlamp concealment devices. NHTSA proposed to either rescind or transfer Standard No. 112's provisions as follows. NHTSA proposed that the definitions of ''headlamp concealment device'' and ''fully opened'' (presently in S3 of Standard 112) be transferred to S4 of Standard 108. NHTSA proposed to rescind the definition of ''power'' (''any source of energy that operates the headlamp concealment device'') since NHTSA believed it is obvious from the context of the requirements that ''power'' includes electrical, pneumatic, vacuum, mechanical, hydraulic or any other source of energy chosen to operate the headlamp concealment devices.

NHTSA proposed that S4, S4.1 ,S4.2, S4.4 and S4.5 of Standard No. 211 be transferred to Standard No. 108 and redesignated as S12, S12.1, S12.2, S12.3 and S12.4, respectively. NHTSA proposed to rescind S4.3's requirement that both headlamp concealment devices be operated by a single switch, expressing its belief that S4.3 relates more to convenience than to safety.

NHTSA further proposed that Standard No. 108's new S12 be a simplified version of Standard No. 112. NHTSA noted that S4.1(a) of Standard No. 112 (proposed as S12.1 of Standard No. 108), requires that when the headlamps are operating with the concealment devices in the fully opened position, they must remain fully open in the event of ''any loss of power to or within the headlamp concealment device.'' S4.1(b) provides that the requirement for remaining open applies in any situation in which there is a ''disconnection, restriction, short-circuit, circuit time delay, or other similar malfunction in any wiring, tubing, hose, solenoid or other component that controls or conducts power for operating the concealment device.'' Since S4.1(b) is merely a more detailed statement of requirement in S4.1(a), NHTSA tentatively concluded that it was unnecessary to include S4.1(b) in S12 of Standard No. 108.

NHTSA also noted that S4.2 of Standard 112 requires that if the power to a concealment device is lost when the device is closed, the device ''shall be capable of being fully opened (a) by automatic means, (b) by actuation of a switch, lever, or other similar mechanism; or (c) by any other means not requiring the use of any tools.'' Because conditions (a) and (b) are examples of ''means not requiring the use of any tools'' as specified in (c), NHTSA tentatively determined that they need not be expressly set forth. Therefore, NHTSA proposed that S4.2 paragraphs (a) and (b) of Standard No. 112 not be included in S12.2 of Standard 108.

Proposed Retention of Timing of Opening and Temperature Requirements

S4.5 of Standard No. 112 requires that each headlamp concealment device be capable of opening within 3 seconds of the actuation of its switch, lever or similar mechanism. It specifies that the capability must exist over a temperature range of −20 °F to +120 °F. In the NPRM, NHTSA tentatively concluded that transferring the S4.5 language to Standard No. 108 would be necessary to assure a minimum level of safety.

The 3 second actuation time limit was the basis for a 1987 amendment to the standard removing a restriction on the opening path of headlamp concealment devices bearing lighted headlamps. Until 1987, Standard No. 112 required that the headlamps not be illuminated until they were in their operating position if the concealment devices moved through intermediate positions in which the headlamps could produce more glare than permitted in their operating position. Chrysler petitioned for changes to make the provision less restrictive. The agency decided that the requirement for full opening of concealment devices in 3 seconds already limited the glare in intermediate positions to no greater duration than the usual glare observed by drivers viewing oncoming vehicles on curves or hills ahead. Therefore, all requirements at intermediate positions were eliminated. (52 FR 35709; September 23, 1987).

The actuation time limit has also become the basis for industry design standards of high intensity discharge (HID) lamps used as headlamps. HID lamps for other applications have long

warm-up cycles before achieving their steady intensity, but HID headlamps use special designs to attain a near steady output within 3 seconds.

The importance of rapid headlamp warm-up and concealment device opening is illustrated by the example of vehicles exiting lighted tunnels in which headlamp use is prohibited. Drivers who exit such tunnels at night would face an obvious hazard if they could not restore headlamp illumination quickly. Likewise, drivers entering unlighted tunnels in the daytime would face an obvious hazard if they could not illuminate their headlamps quickly.

NHTSA proposed to retain and transfer the operating temperature requirements of Standard No. 112 because they reflect drivers' needs. The operation of moveable headlamp panels could be easily affected by lubricants that thicken in cold temperature or by changes in the clearance between sliding or rotating parts in response to extreme temperatures.

Other Proposed Changes and Proposed Effective Date

In addition to proposing to add S12 to Standard No. 108, NHTSA also proposed to take the necessary steps to ensure that S11 and S12 are placed to follow S10 in the published Code of Federal Regulation version of Standard No. 108. In Title 49 of the Code of Federal Regulations (CFR) Parts 400–999, revised as of October 1, 1995, in Standard No. 108 (49 CFR 571.108), more than 70 pages of figures separate S10 from S11. NHTSA has received numerous complaints about S11's out-of-sequence placement in the CFR.

Finally, NHTSA tentatively determined that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest and proposed that, if adopted in a final rule, the amendments take effect 30 days after the Federal Register publication of the final rule.

Public Comments and NHTSA Response

In response to the NPRM, NHTSA received comments from the American Automobile Manufacturers Association (AAMA), Chrysler Corporation, and the Advocates for Highway and Auto Safety (Advocates). AAMA and Chrysler concurred with NHTSA's proposal to transfer Standard No. 112's essential provisions to Standard No. 108. Chrysler stated that the action ''seems logical and reasonable.'' Advocates expressed the general view that none of NHTSA's proposed changes would make the requirements ''easier to understand or to apply,'' and thus ''nothing of substance is achieved by such action.''

In NHTSA's view, requirements for headlamp concealment devices are properly part of the standard on lamps, reflective devices and associated equipment, and would be easier to find if included in that safety standard. Further, streamlining the transferred requirements by removing unnecessary or repetitive language would facilitate reading of the headlamp concealment requirements.

Advocates strongly opposed NHTSA's proposal to remove the requirement (in S4.3 of Standard No. 112) that both headlamp concealment devices be operated by a single switch. Advocates characterized the requirement as a ''central safety feature of headlamp concealment device operation,'' and suggested instances in which, if both headlamps were not simultaneously lighted, a crash or other accident might occur.

Advocates stated that ''the various forms of disablement in many thousands of drivers'' might make it difficult or impossible for some drivers to activate a second headlamp with a second switch shortly after activating the first headlamp. Advocates also stated that there are numerous highway operating situations in which a driver's safety might be seriously compromised if the deployment of the second headlamp were unnecessarily delayed. The commenter stated that highway construction areas that use temporary traffic control devices, such as retroreflective cones, may have abrupt curves or horizontal sight restrictions which would make being able to obtain quick, ample illumination below the horizon, by both headlamps, crucial for a driver.

NHTSA has decided not to rescind the requirement of S4.3 as proposed. As Advocates' comment makes clear, while a single switch may be a convenience to many drivers, it is a necessity for other drivers. Further, the requirement may promote vehicle safety under some driving conditions. Since S4.3 is a longstanding provision in Standard No. 112, transferring S4.3 to Standard No. 108 would not impose an additional regulatory burden on industry. The provisions of S4.3 are thus transferred to Standard No. 108.

Final Rule

As discussed above, the final rule adopts the regulatory text proposed in the NPRM, except that the text of S4.3 of Standard No. 112 is also transferred to Standard No. 108 and designated as S12.3. To accommodate the addition of S12.3, the other S12 provisions are renumbered accordingly.

NHTSA has taken the necessary steps to ensure that S11 and S12 are placed immediately after S10 in the published version in Standard No. 108. NHTSA has received oral assurance from an editor at the Office of the Code of Federal Regulations that in the October 1, 1996 edition of 49 CFR 571.108, S11 will be placed immediately after S10. Similarly, S12 will be placed immediately after S11.

To make Standard No. 108 easier to understand, NHTSA adds a heading ''Figures and Tables to § 571.108'' after S12. NHTSA also places the following figures in their logical sequence: Figures 1a, 1b, and 1c (which at present follow S5.1.1.6) and Figure 2 (which at present follows S5.1.1.18) are moved to follow the new heading for Standard No. 108 figures, and to precede Figure 4–1.

NHTSA received no comment on its proposal that the final rule take effect 30 days after it is published. NHTSA adopts as final its tentative conclusion that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest. This rule will not compromise safety and will not make substantive changes to the present requirements for headlamp concealment devices. This final rule takes effect 30 days after its publication in the Federal Register.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' NHTSA has analyzed the impact of this rulemaking action and determined that it is not ''significant'' under the Department of Transportation's regulatory policies and procedures. This final rule does not impose any additional costs and yields no savings because this rule makes no substantive changes in requirements for headlamp concealment devices and only makes administrative changes. Since there are no impacts, preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, this final rule simplifies the language and requirements of the standard and results in all of the headlamp provisions being grouped

together in one standard. It does not affect any costs associated with the manufacture or sale of vehicles. Accordingly, a final regulatory flexibility analysis has not been prepared.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that it will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule has no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the state's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Motor vehicle safety, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by adding in S4, in alphabetical order, definitions of ''Fully opened'' and ''Headlamp concealment device,'' and adding S12 and S12.1 through S12.5 after S11, to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4. *Definitions.*

* * * * *

Fully opened means the position of the headlamp concealment device in which the headlamp is in the design open operating position.

Headlamp concealment device means a device, with its operating system and components, that provides concealment of the headlamp when it is not in use, including a movable headlamp cover and a headlamp that displaces for concealment purposes.

* * * * *

S12. *Headlamp Concealment Devices.*

S12.1 While the headlamp is illuminated, its fully opened headlamp concealment device shall remain fully opened should any loss of power to or within the headlamp concealment device occur.

S12.2 Whenever any malfunction occurs in a component that controls or conducts power for the actuation of the concealment device, each closed headlamp concealment device shall be capable of being fully opened by a means not requiring the use of any tools. Thereafter, the headlamp concealment device must remain fully opened until intentionally closed.

S12.3 Except for malfunctions covered by S12.2, each headlamp concealment device shall be capable of being fully opened and the headlamps illuminated by actuation of a single switch, lever, or similar mechanism, including a mechanism that is automatically actuated by a change in ambient light conditions.

S12.4 Each headlamp concealment device shall be installed so that the headlamp may be mounted, aimed, and adjusted without removing any component of the device, other than components of the headlamp assembly.

S12.5 Except for cases of malfunction covered by S12.2, each headlamp concealment device shall, within an ambient temperature range of −20° F. to +120° F., be capable of being fully opened in not more than 3 seconds after the actuation of a driver-operated control.

* * * * *

§ 571.108 [Amended]

3. In § 571.108, a new heading is added following S12.5 and preceding the figures and tables, to read ''Figures and Tables to § 571.108''.

4. In § 571.108, Figures 1a, 1b and 1c which follow S5.1.1.6, and Figure 2 which follows S5.1.1.18, are moved to appear in numerical order after the heading ''Figures for § 571.108'' and before Figure 4–1.

§ 571.112 [Removed]

5. Section 571.112 is removed in its entirety and reserved.

Issued on: September 11, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–23795 Filed 9–23–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AB49

Importation, Exportation, and Transportation of Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published June 21, 1996, (61 FR 31850). The regulation related to Import Declaration Requirements contained at § 14.61 is corrected.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Marks, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections supersede 50 CFR § 14.61 on the effective date and affect persons or businesses required to file the Declaration for Importation or Exportation of Fish or Wildlife (Declaration Form 3–177). The June 21, 1996 final rule incorrectly allowed importers or their agents to file either a Declaration Form 3–177 with the Service or an electronic Declaration Form 3–177 through the United States Customs Service Automated Commercial System (ACS). The Service's pilot program for allowing the filing of an electronic Declaration Form 3–177 through the Automatic Commercial System, Automated Broker Interface (ABI) began on October 29, 1990, in the Port of New York.

Need for Correction

The ACS system for filing electronic versions of Declaration Form 3–177 has

not been fully implemented at all of the thirteen designated ports authorized by the Service for the importation and exportation of wildlife and wildlife products. Because the system is not fully implemented, the Service will continue to require the filing of a Declaration Form 3–177 at the time Service clearance is requested and will not allow the filing of an electronic Declaration Form 3–177 by itself. This correction is being made to § 14.61 of the final regulations to provide clarification and to avoid unnecessary delay in clearance of wildlife shipments.

Correction of Publication

Accordingly, the publication on June 21, 1996, of the final regulations of 50 CFR parts 13 and 14 which were the subject of FR Doc. 96–15388, is corrected by revising § 14.61 starting on page 31870, column 1, line 16, to read as follows:

§ 14.61 Import declaration requirements.

Except as otherwise provided by the regulations of this subpart, importers or their agents must file with the Service a completed Declaration for Importation or Exportation of Fish or Wildlife (Form 3–177), signed by the importer or the importer's agent, upon the importation of any wildlife at the place where Service clearance under § 14.52 is requested. However, wildlife may be transshipped under bond to a different port for release from custody by Customs Service officers under 19 U.S.C. 1499. For certain antique articles as specified in § 14.22, importers or their agents must file a Form 3–177 with the District Director of Customs at the port of entry prior to release from Customs custody. Importers or their agents must furnish all applicable information requested on the Form 3–177 and the importer, or the importer's agent, must certify that the information furnished is true and complete to the best of his/her knowledge and belief.

Dated: September 26, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–24442 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960531152–6254–02; I.D. 081596A]

RIN 0648–AI18

Fisheries of the Exclusive Economic Zone Off Alaska; Technical Amendment; Correction and Clarification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS is correcting several sections of regulations that contain minor errors as a result of NMFS' consolidation of all Alaska regulations into one CFR part in response to the President's Regulatory Reform Initiative. This final rule does not make substantive changes to the existing regulations; rather, it corrects changes to text that were inadvertently made through reorganization of management measures for use in the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI). NMFS is also correcting several errors in cross-references in the definitions section that occurred when NMFS issued the final rule to implement Amendment 1 to the Fishery Management Plan for Scallops off Alaska.

EFFECTIVE DATE: September 24, 1996.

ADDRESSES: Copies of this final rule for this action may be obtained from: Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, ATTN: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the following fisheries in the exclusive economic zone (EEZ) off Alaska: Groundfish fisheries in the GOA EEZ under the Fishery Management Plan for Groundfish of the Gulf of Alaska; groundfish fisheries in the BSAI EEZ under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; commercial harvest of BSAI king and Tanner crabs under the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands; and the commercial harvest of scallops under the Fishery Management Plan for the Scallop Fishery off Alaska. These fishery management plans (FMPs) are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H of 50 CFR part 600. The FMPs were prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act.

As part of the President's Regulatory Reform Initiative, NMFS issued a final rule (61 FR 31228, June 19, 1996) removing parts 671, 672, 673, 675, 676, and 677 of title 50 CFR, and consolidating the regulations contained therein into one new part (50 CFR part 679). No substantive changes were made to the regulations by the consolidation of the six parts. However, due to the complexity of the reorganization, some errors were introduced into the regulatory text. This rule corrects those errors. It makes no substantive changes.

On July 23, 1996, NMFS published a final rule (61 FR 38099) implementing Amendment 1 to the scallop FMP. Under the definition of ''Authorized fishing gear,'' definitions of ''Dive'' and ''Scallop dredge'' were added and related paragraphs redesignated. However, the cross-references in the redesignated paragraphs were not revised to reflect the new numbering. This document corrects those errors.

This action: (1) Clarifies the recordkeeping requirements for catcher vessels under 60 ft (18.3 m) length overall by specifically exempting them from the requirement to comply with the recordkeeping and reporting requirements contained in § 679.5(a)-(k); (2) removes duplicative text regarding check-in/check-out reports; (3) corrects the time limit for check-out reports submitted by buying stations delivering to shoreside processors from 48 hours to 24 hours; (4) corrects the submittal instructions for Individual Fishing Quota (IFQ) shipment reports; (5) revises wording in general observer requirements for catcher/processors or catcher vessels to make grammatically consistent with related subordinate paragraphs; (6) corrects paragraph numbering in Research Plan observer coverage responsibilities for shoreside processors; and (7) corrects cross-references contained in the definition of ''pelagic trawl'' under ''authorized fishing gear'' in the definitions section.

Classification

Because this technical amendment makes only minor, non-substantive corrections to an existing rule, prior notice and opportunity for public comment would serve no purpose. Accordingly, the Assistant Administrator for Fisheries, under 5 U.S.C. 553(b)(B), for good cause finds that prior notice and opportunity for public comment are unnecessary. Since this rule is non-substantive, it is not subject to a delay in effective date under 5 U.S.C. 553(d).

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to a rule that has been determined to be not significant under E.O. 12866. No changes in the regulatory impact previously reviewed and analyzed will result from implementation of this technical amendment.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: September 13, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.2, paragraph (9)(iii) introductory text and paragraphs (9)(iv) and (9)(v) under the definition of ''Authorized fishing gear'' are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear * * *

(9) * * *

(iii) Except for the small mesh allowed under paragraph (9)(ix) of this definition:

* * * * *

(iv) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (9)(iii) of this definition for a distance equal to or greater than one half the vessel's LOA;

(v) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (9)(iii) and (iv) of this definition;

3. In § 679.5, paragraph (a)(1)(i), (h)(2)(i)(B), (h)(2)(ii)(D), (l)(2)(ii)(A), (l)(2)(iii)(A), and (l)(2)(iii)(C) are revised, paragraph (h)(2)(i)(C) is removed, and paragraph (a)(1)(iii) is added to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) *General requirements*—(1) *Applicability, Federal fisheries permit.* Except as provided in paragraph (a)(iii) of this section, the following must comply with the recordkeeping and reporting requirements of this section:

(i) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

* * * * *

(iii) A catcher vessel less than 60 ft (18.3 m) LOA, is not required to comply with recordkeeping and reporting requirements contained in § 679.5(a)-(k).

* * * * *

(h) * * *

(2) * * *

(i) * * *

(B) *Mothership, shoreside processor, buying station.* Before a mothership, shoreside processor, or buying station commences receipt of groundfish from Alaska State or Federal waters of any reporting area except 300, 400, 550, or 690, the operator or manager must submit by fax a check-in report (BEGIN message) to the Regional Director.

(ii) * * *

(D) *Buying station delivering to a shoreside processor.* If a buying station delivering to a shoreside processor completes delivery of groundfish, the operator or manager of the buying station must submit by fax a check-out report to the Regional Director within 24 hours after departing a reporting area or leaving either the Alaska State or Federal part of a reporting area.

* * * * *

(2) * * *

(ii) *Submittal.* (A) A shipment report must be submitted to NMFS Alaska Enforcement Division prior to shipment or transfer, in a manner prescribed on the registered buyer permit.

* * * * *

(iii) * * *

(A) Complete a Shipment Report for each shipment or transfer from that registered buyer prior to shipment and assure that the Shipment Report is submitted to, and received by, the NMFS Alaska Enforcement Division, within 7 days of the date shipment or transfer commenced;

* * * * *

(C) Submit a revised Shipment Report if any information on the original Shipment Report changes prior to the first destination of the shipment. A revised Shipment Report must be clearly labeled ''Revised Shipment Report,'' and must be received by the NMFS Alaska Enforcement Division, within 7 days of the change.

* * * * *

6. In § 679.51, paragraph (a)(2)(v) is revised to read as follows:

§ 679.51 General observer requirements (applicable through December 31, 1996).

(a) * * *

(2) * * *

(v) Participating for more than 3 fishing days in a directed fishery for groundfish using pot gear must carry a NMFS-certified observer during at least one fishing trip during a calendar quarter for each of the groundfish fishery categories defined under paragraph (b) of this section in which the vessel participates.

* * * * *

§ 679.52 [Amended]

7. In § 679.52, paragraph (e)(3) is redesignated as paragraph (e)(2)(iii), paragraphs (e)(3)(i)-(e)(3)(iii) are redesignated as paragraphs (e)(2)(iii)(A)-(e)(2)(iii)(C), paragraphs (e)(4)-(e)(6) are redesignated as paragraphs (e)(2)(iv)-(e)(2)(vi), and paragraphs (e)(6)(i)-(e)(6)(iii) are redesignated as paragraphs (e)(2)(vi)(A)-(e)(2)(vi)(C).

[FR Doc. 96–24077 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 186
Tuesday, September 24, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Grape Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of grapes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and to include the current Grape Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business November 25, 1996 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 22, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m. to 4:45 p.m., est Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John Meyer, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 30, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

Section 8 of the 1998 Grape Crop Provisions adds interplanting as an insurable farming practice as long as it is interplanted with another perennial crop. This practice was not insurable under the present Grape Endorsement or the General Crop Insurance Policy to which it attached. Consequently, interplanting information will need to be collected using the FCI–12–P Pre-Acceptance Perennial Crop Inspection Report form for approximately 0.5 percent of the 5,408 insureds who interplant their grape crop. Standard interplanting language has been added to most perennial crops. Interplanting is an insurable practice as long as it does not adversely affect the insured crop. This is a benefit to agriculture because insurance is now available for most perennial crop producers and, as a result, less acreage will need to be placed into the noninsured crop disaster assistance program (NAP).

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Grape Crop Insurance Provisions.'' The information to be collected include: a crop insurance application and acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of grapes that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970 hours.

FCIC is requesting comments for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, USDA, FSA, Advisory and Corporate Operations Staff, Regulatory Review Group, P.O. Box 2415, STOP 0572, Washington, D.C. 20013–2415, telephone (202) 690–2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must certify to the number of acres and production on an annual basis or receive a transitional yield. The producer must maintain the records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.138, Grape Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will supersede and replace the current provisions for insuring grapes found at 7 CFR 401.130 (Grape Endorsement) thereby limiting the effect of the current provisions to the 1997 and prior crop years. Upon publication of the Grape Crop Provisions as a final rule, the current provisions for insuring grapes will be removed from § 401.130 and that section will be reserved.

This rule makes minor editorial and format changes to improve the Grape Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring grapes as follows:

1. Section 1—Add definitions for the terms ''days,'' ''FSA,'' ''good farming practice,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee,'' ''set out,'' ''varietal group,'' and ''written agreement'' for the purpose of clarification.

2. Section 3(a)—Specify that the insured may select only one price election for all the grapes in the county insured under the policy, unless the Special Provisions provide different price elections by variety or varietal group, in which case the insured may select one price election for each grape variety or varietal group designated in the Special Provisions. The price election the insured selects for each grape type must have the same relationship to the maximum price offered. This helps protect against adverse selection and simplifies administration of the program.

3. Section 3(b)—Specify that in California only, an insured may apply for a written agreement to establish a price election for a variety they wish to insure, when that specific variety does not have a separate price election on the Special Provisions.

4. Section 3(c)—Specify that the insured must report damage, removal of bearing vines, and any change in practice that may reduce yields. For the first year of insurance for acreage interplanted with another perennial crop or anytime the planting pattern of such acreage is changed, the insured must also report, the age and type, if applicable, of the interplanted crop, its planting pattern, and any other information needed to establish the approved yield. If the insured fails to notify the insurer of factors that may reduce yields from previous levels, the insurer will reduce the production guarantee at any time the insurer becomes aware of damage, removal of vines, or change in practices. This allows the insurance provider to limit liability, if necessary, before insurance attaches.

5. Section 5—The cancellation and termination dates are changed to February 28 in California, and to November 20 in all other States except Idaho, Oregon, and Washington. Currently, the policy states January 31 in California, and December 10 in all other States except Idaho, Oregon, and Washington. The change in some States from December 10 to November 20 was made to standardize the perennial crop policies. In California, the change was made at the request of a grower organization and will allow additional time for growers to make decisions

regarding their insurance coverage without compromising program integrity.

6. Section 7(e)—Specify that at least an average of 2 tons of grapes per acre must have been produced in at least 1 of the 3 most recent crop years of the actual production history base period for the crop to be insured, unless we inspect such acreage and give our approval in writing. Previous endorsement required a minimum of 2 tons per acre but did not clearly state that the minimum must have been produced in 1 of the 3 most recent crop years.

7. Section 8—Allow insurance for grapes interplanted with another perennial crop in order to make insurance available on more acreage and reduce reliance on the noninsured crop disaster assistance program (NAP) for protection for crop losses.

8. Section 9(a)—Change the date insurance attaches from February 1 to March 1 in California, and from December 11 to November 21 in all other States to be consistent with other perennial crops. Clarifies that for the year of application, if an application is received after February 19 (February 20 in years when February has 29 days) but prior to March 1 in California, or after November 11 but prior to November 21 in all other States, insurance will attach on the 10th day after the properly completed application is received in the insurance provider's local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements.

9. Section 9(b)—Add provisions to clarify insurability when an insurable share is acquired or relinquished on or before the acreage reporting date.

10. Section 10(b)—Clarify that disease and insect infestation are excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or causes disease or insect infestation for which no effective control mechanism is available. Damage caused by phylloxera is not covered regardless of cause.

11. Section 11(b)—Add provisions that require an insured to notify the insurer of damage prior to harvest in order to permit a timely appraisal. Also add provisions that prohibit the insured from selling or otherwise disposing of any damaged production until written consent is provided by the insurance provider.

12. Section 12(c)—Add provisions for converting grape production harvested and dried for raisins to a fresh weight basis.

13. Section 12(e)—Add provisions indicating that the average market price will be determined in all States by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued. In the current grape endorsement, in California the average market price is the price shown by the Federal State Market News California Wine Report for the same week in which the damaged grapes were valued.

Also add provisions indicating that the value per ton of the qualifying damaged production and the average market price of undamaged grapes will be determined on the earlier of the date the damaged production is sold or the date of final inspection for the unit. The current grape endorsement does not list a specific time.

14. Section 13—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting certain modifications of the insurance contract by written agreement. Written agreements are not available under the current Grape Endorsement. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for and duration of written agreements.

List of Subjects in 7 CFR Part 457

Crop insurance, grape.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1998 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), and 1506(p).

2. 7 CFR part 457 is amended by adding a new § 457.138 to read as follows:

§ 457.138 Grape Crop Insurance Provisions.

The Grape Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Grape Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions, and these crop provisions will control the Basic Provisions.

1. Definitions.

(a) *Days*—Calendar days.

(b) *FSA*—The Farm Service Agency, an agency of the United States Department of Agriculture, or any successor agency.

(c) *Good farming practices*—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

(d) *Graft*—To unite a shoot or bud (scion) with a rootstock or an existing vine in accordance with recommended practices to form a living union.

(e) *Harvest*—Picking the clusters of grapes from the vines either by hand or machine.

(f) *Interplanted*—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

(g) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(h) *Non-contiguous*—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal, will be considered as contiguous.

(i) *Production guarantee (per acre)*—The number of grapes (tons) determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

(j) *Set out*—Physically planting the desired variety of grape plant in the ground in a desired planting pattern.

(k) *Ton*—Two thousand (2000) pounds avoirdupois.

(l) *Varietal group*—Grapes with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

(m) *Written agreement*—A written document that alters designated terms of this policy in accordance with section 13.

2. Unit Division.

(a) In California only, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into basic units by each variety that you insure.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the

optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units established for a crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, that can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee; and

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us.

(g) Each optional unit must also meet one or more of the following criteria, as applicable:

(1) In California only, optional units may be established if each optional unit is located on non-contiguous land.

(2) In all states except California, each optional unit must meet one or more of the following criteria:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern.

(iii) *Optional Units on Acreage Located on Non-contiguous Land:* In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, or irrigated/non-irrigated land, optional units may be established if each optional unit is located on non-contiguous land.

(iv) *Optional Units on Acreage by Varietal Group:* In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, irrigated/non-irrigated land or on non-contiguous land, optional units may be established by varietal group when separate varietal groups are specified in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) In California, you may select only one price election and coverage level for each grape variety in the county insured under this policy. In all other states, you may select only one price election for all the grapes in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price election for each varietal group designated in the Special Provisions. The price elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose 100 percent (100%) of the maximum price election for one varietal group, you must also choose 100 percent (100%) of the maximum price election for all other varietal groups.

(b) In California only, if the Special Provisions do not provide a separate price election for a specific variety you wish to insure, you may apply for a written agreement to establish a price election. Your application for the written agreement must include:

(1) The number of tons sold for at least the two most recent crop years; and

(2) The price received for all production of the variety in the years for which production records are provided.

(c) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by variety or varietal group, if applicable:

(1) Any damage, removal of bearing vines, change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing vines on insurable and uninsurable acreage;

(3) The age of the vines and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and the type or variety or varietal group, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request to establish the yield upon which your production guarantee is based.

We will reduce the yield used to establish your production guarantee, based on our estimate of the effect of the following: interplanted perennial crop; removal of vines; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

4. Contract Changes.

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date for all States except California, and October 31 preceding the cancellation date for California.

5. Cancellation and Termination Dates.

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are February 28 (February 29 in years when February has 29 days) in California and November 20 in all other states.

6. Report of Acreage.

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the grape varieties in California or the varietal groups in all other States.

7. Insured Crop.

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the grapes (In California, any insurable variety that you elect to insure; in all other States, all insurable varieties.) in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for wine, juice, raisins, or canning;

(c) That are grown in a vineyard that, if inspected, is considered acceptable by us;

(d) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; or

(e) That have produced an average of two tons of grapes per acre during at least one of the three crop years immediately preceding the insured crop year, unless we inspect and allow insurance on such acreage.

8. Insurable Acreage.

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8) that prohibit insurance attaching to a crop planted with another crop, grapes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period.

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on March 1 in California and November 21 in all other States of each crop year, except that for the year of application if your application is received after February 19 (February 20 in years when February has 29 days) but prior to March 1 in California, or after November 11 but prior to November 21 in all other States, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any

information that we require for the crop or to determine the condition of the vineyard.

(2) The calendar date for the end of the insurance period for each crop year is the date during the calendar year in which the grapes are normally harvested, as follows:

(i) October 10 in Mississippi and Texas;

(ii) November 10 in California, Idaho, Oregon, and Washington; and

(iii) November 20 in all other states.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of grapes on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the vineyard;

(3) Wildlife;

(4) Earthquake;

(5) Volanic eruption; or

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Phylloxera, regardless of cause; or

(3) Inability to market the grapes for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties in the Event of Damage or Loss.

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election for each variety or varietal group;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to count of each variety or varietal group, if applicable, (see section 12 (c)–(e)) by the respective price election;

(5) Totaling the results of section 12(b)(4);

(6) Subtracting the total in section 12(b)(5) from the total in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is damaged solely by uninsured causes; or

(C) For which you fail to provide production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection 12(e)); and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage. Grape production that is harvested and dried for raisins will be converted to a fresh weight basis by multiplying the number of tons of raisin production by 4.5.

(d) If any grapes are harvested before normal maturity or for a special use (such as Champagne or Botrytis-affected grapes), the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price per ton for fully matured grapes of the type for which the claim is being made.

(e) Mature marketable grape production may be adjusted for quality deficiencies as follows:

(1) Production will be eligible for quality adjustment if, due to insurable causes, it has a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. The value per ton of the qualifying damaged production and the average market price of undamaged grapes will be determined on the earlier of the date the damaged production is sold or the date of final inspection for the unit. The average market price of undamaged production will be calculated by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued.

(2) Grape production that is eligible for quality adjustment, as specified in subsection 12(e)(1) will be reduced by:

(i) Dividing the value per ton of the damaged grapes by the maximum price election available for such grapes to determine the quality adjustment factor; and

(ii) Multiplying this result (not to exceed 1.000) by the number of tons of the eligible damaged grapes.

13. Written Agreement.

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on September 12, 1996.

Phyllis W. Honor,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–23993 Filed 9–23–96; 8:45 am]

BILLING CODE 3410–FA–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5614–2]

Standards of Performance for New Stationary Sources Rescission of Alternate Opacity Standard for Omaha Public Power District—Nebraska City Power Station, Nebraska City, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rule would rescind the alternate opacity emission limit established for the Nebraska City Power Station in Nebraska City, Nebraska, owned and operated by Omaha Public Power District (OPPD), pursuant to the New Source Performance Standards (NSPS) under the Clean Air Act. In the final rules section of the Federal Register, the EPA is promulgating this revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Commenters should also indicate whether they wish to request a public hearing on this action, including the reasons for the request and the nature of the comments which would be presented at any public hearing. If a hearing is requested, the EPA will determine whether to hold a public hearing, and will announce the time and location of any hearing in a subsequent Federal Register document.

DATES: Comments and requests for public hearing must be submitted on or before October 24, 1996.

ADDRESSES: Written comments on this action should be addressed to Angela Ludwig, Air Permits and Compliance Branch, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

Docket: Pursuant to sections 307(d)(1)(C) of the CAA, 42 U.S.C. sections 7607(d)(1)(C), this action is subject to the procedural requirements of section 307(d). Therefore, the EPA has established a public docket for this action, Docket # A–96–31. Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Permits and Compliance Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 10460.

FOR FURTHER INFORMATION CONTACT: Angela Ludwig, Air Permits and Compliance Branch, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7411.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule, which is located in the rules section of the Federal Register.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Fossil-fuel-fired steam generating units, Intergovernmental relations.

Authority: Sections 111 and 301(a) of the CAA, 42 U.S.C. sections 7411 and 7601(a).

Dated: September 16, 1996.

Carol Browner,

Administrator.

For the reasons set forth in the preamble, subpart D of part 60 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[Amended]

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601

Subpart D—[AMENDED]

§ 60.42 [Amended]

2. Section 60.42 is amended by removing paragraph (b)(3).

§ 60.45 [Amended]

3. Section 60.45 is amended by removing paragraph (g)(1)(iii).

[FR Doc. 96–24282 Filed 9–23–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 96–187 ; FCC 96–367]

Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996 (Tariff Streamlining Provisions for Local Exchange Carriers)

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In light of the passage of the Telecommunications Act of 1996 (1996 Act), which provides for streamlining tariff filings by local exchange carriers (LECs), the Commission is issuing this Notice of Proposed Rulemaking (NPRM) to implement the specific streamlining requirements of the Act. Specifically, the NPRM seeks comment on the statutory effect of LEC tariffs subject to streamlined regulation being ''deemed lawful.'' In addition, the NPRM seeks comment on the types tariffs eligible for filing on a streamlined basis and measures to streamlining the administration of LEC tariff process.

DATES: Comments must be submitted on or before October 9, 1996. Reply comments must be submitted on or before October 24, 1996. Written comments on the Initial Regulatory Flexibility Analysis must be filed in accordance with the same filing deadlines set for comments on the other issues in the NPRM. Written comments by the public on the proposed and or modified information collections are also due at the same time as other comments on this NPRM. Written comments must be submitted by OMB on the proposed and/or modified information collections within 60 days of publication of this NPRM in the Federal Register.

ADDRESSES: Comments and Reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Jerry McKoy of the Common Carrier Bureau, 1919 M Street, N.W., Room 518, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's commercial copy contractor,

International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan or Dan Abeyta at (202) 418–1520, Common Carrier Bureau, Competitive Pricing Division. For additional information concerning the information collections contained in this NPRM, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's NPRM of Proposed Rulemaking (FCC 96–367) adopted on August 30, 1996 and released on September 6, 1996. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20037.

Background

The NPRM tentatively concludes that these provisions to streamline LEC tariff filings do not preclude the Commission from exercising its forbearance authority under Section 10(a) of the Act to establish permissive or mandatory detariffing of LEC tariffs should the Commission choose to do so. The NPRM solicits comments on this tentative conclusion.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as comments on the other issues in the NPRM; OMB notification of action is due 60 days from the date of publication in the Federal Register. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996 (Tariff Streamlining Provisions for Local Exchange Carriers) CC Docket No. 96–187.

Form No: N/A.

Type of Review: New Collection

Respondents: Business or other for-profit, including small businesses.

Proposed requirement	Number of respondents	Annual hour burden per response
Electronic filing	50	72
Tariff summaries	50	36
Analysis of lawfulness	50	72
Separate filing for rate decreases	10	4
Identification/labelling of streamlined tariffs	50	9
Filing of proposed orders	10	8

Total Annual Burden: 9,570.

Estimated Costs Per Respondents: $2,800.

Needs and Uses: The information collections proposed in this NPRM would be used to ensure that affected telecommunications carriers fulfill their obligations under the Communications Act, as amended.

SYNOPSIS OF NPRM OF PROPOSED RULEMAKING

I. Introduction

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) became law. The 1996 Act seeks ''to provide for a pro-competitive, deregulatory national political framework'' designed to make available to all Americans advanced telecommunications and information technologies and services ''by opening all telecommunications markets to competition.'' Section 402(b)(1)(A)(iii) of the 1996 Act adds Section 204(a)(3) to the Communications Act, which provides for streamlined tariff filings by local exchange carriers (LECs). In this NPRM, the Commission proposes measures to implement the specific streamlining requirements of Section 204(a)(3) as well as additional steps for streamlining the tariff process, consistent with the goals of the 1996 Act.

II. The 1996 Act

2. Section 402(b)(1)(A)(iii) of the 1996 Act adds new subsection 3 to Section 204(a) of the Communications Act of 1934 (the Act):

(3) A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period as appropriate.

Section 402 of the 1996 Act also amends Section 204(a) of the Act to provide that the Commission shall conclude any hearings initiated under this section within five months after the date the charge, classification, regulation, or practice subject to the hearing becomes effective. Section 402(b)(4) of the 1996 Act provides that these amendments shall apply to any charge classification, regulation, or practice filed on or after one year after the date of enactment of the Act (i.e., February 8, 1997).

3. Under the 1996 Act, a local exchange carrier (LEC) is defined as ''any person that is engaged in the provision of telephone exchange service or exchange access.'' A LEC ''does not include a person insofar as such person is engaged in the provision of commercial mobile radio service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.''

III. Streamlined LEC Tariff Filings Under the 1996 Act

4. We believe that by adopting the provisions in Section 204(a)(3), Congress did not intend for the Commission to defer tariffs eligible for streamlined filing. Accordingly, we tentatively conclude that Congress intended to foreclose Commission exercise of its general authority under Section 203(b)(2) to defer up to 120 days tariffs that LECs may file on seven and 15 days' notice. We solicit comment on this tentative conclusion. Section 204(a)(3) of the Act also provides that LEC tariffs filed on a streamlined basis shall be ''deemed lawful.'' The 1996 Act and the legislative history are silent regarding the specific legal consequences of this provision. We tentatively conclude that, by specifying that LEC tariffs shall be ''deemed lawful,'' Congress intended to change the current regulatory treatment of LEC tariff filings.

5. We have identified at least two possible interpretations of ''deemed lawful'' that would alter the current regulatory treatment of LEC tariff filings. First, this language could be interpreted to change the legal status of LEC tariffs

that become effective without suspension and investigation. This interpretation of the statutory language would treat tariffs that have been ''deemed lawful'' similar to the way that we currently treat tariffs found lawful by the Commission after investigation. This interpretation, however, absent a suspension and investigation within 7/15 days, would limit the remedies available to LEC customers for rates, terms, and conditions that violate Section 201–202 of the Act in that damages could not be awarded for the period prior to the time the Commission determined in a Section 205 or 208 proceeding that a different rate, charge, classification, or practice would be lawful in the future. We solicit comment on this interpretation of ''deemed lawful'' and whether Congress intended ''deemed lawful'' to have the effect of limiting customers' remedies.

6. As an alternative approach, ''deemed lawful'' could be interpreted not to change the status of tariffs that become effective without suspension and investigation, but only to establish higher burdens for suspensions and investigation, such as by ''presuming'' LEC tariffs ''lawful.'' Under this interpretation, the statutory language ''unless the Commission [suspends and investigates] before the end of that 7-day or 15-day period,'' would not apply to the ''deemed lawful'' phrase, but only to the ''shall be effective'' phrase. A tariff that is reviewed under these presumptions of lawfulness is still subject to complaints and investigations under Sections 208 and 205. Damages may also be awarded for any period the tariff was in effect. We solicit comment on whether we should interpret ''deemed lawful'' to create a presumption of lawfulness in the pre-effective tariff review process.

7. Any interpretation of ''deemed lawful,'' of course, must be consistent with other provisions of the Communications Act. Section 402(b)(1)(A)(iii) of the 1996 Act adds new Section 204(a)(3) concerning LEC tariff streamlining, but does not otherwise amend the statutory scheme for tariffing of interstate common carrier communications services. Thus, LECs and other carriers continue to be required to file tariffs pursuant to Section 203, and the rates, terms, and conditions of service must be just and reasonable under Section 201(b) of the Act, and not unreasonably discriminatory under Section 202(a) of the Act. Pursuant to Section 204(a) of the Act,the Commission may suspend and investigate proposed tariffs if they raise substantial questions of law and fact and there is substantial risk that ratepayers or competitors would be harmed if the proposed tariff revisions were allowed to take effect. The 1996 Act also does not alter the Commission's authority to reject tariff filings, which derives from Section 201 of the Act.

8. We believe that both of our possible interpretations are consistent with this statutory scheme. Thus, our interpretations would not appear to conflict with any of the statutory provisions left in place by the 1996 Act. We additionally solicit comment on other possible interpretations of ''deemed lawful.'' We will adopt the interpretation that will best meet the text and intent of the 1996 Act's tariff streamlining provisions.

IV. LEC Tariffs Eligible for Filing on a Streamlined Basis

9. The NPRM next considers the types of LEC tariff filings that are eligible for streamlined treatment. We tentatively conclude that all LEC tariff filings that involve changes to the rates, terms and conditions of existing service offerings are eligible for streamlined treatment. We believe that this interpretation would be most consistent with the purposes of Section 204(a)(3), and would simplify the administration of the LEC tariffing process. We solicit comment on this tentative conclusion. We solicit comment on the appropriate treatment of tariffs for new services. In addition, Section 204(a)(3) states that LECs ''may'' file under streamlined provision. We tentatively conclude that LECs may elect to file on longer notice periods, but that if they choose to do so, such tariffs would not be ''deemed lawful.'' We also tentatively conclude that Section 204(a)(3) does not preclude the Commission from exercising its forbearance authority under Section 10(a) of the Act to establish permissive or mandatory detariffing of LEC tariffs. We solicit comments on these tentative conclusions.

V. Streamlined Administration of LEC Tariffs

10. We also discuss additional measures to more fully achieve a more streamlined and deregulatory environment for the administration of LEC tariffs without undermining existing statutory requirements.

11. *Electronic Filing.* We propose to require that carriers file tariffs and associated documents electronically. We solicit comment on whether the Commission should be responsible for organizing, posting, and supervising the tariff electronic filing system, or whether each carrier should be given the responsibility for posting, managing, and maintaining its electronic file of tariffs, subject to Commission requirements. We tentatively conclude that carrier administration of the electronic filing system, subject to Commission oversight, would lead to a more streamlined administration of tariffs. We also propose to require that tariffs be submitted electronically in a specified database software program. We invite parties to submit detailed proposals for implementing an electronic system for tariff filings.

12. *Exclusive Reliance of Post-Effective Tariff Review.* We solicit comment on whether the Commission can, and should, adopt a policy of relying exclusively on post-effective tariff review, at least for certain types of tariffs. If parties conclude that we should adopt this practice for certain types of tariff transmittals, they should identify the classes and explain why post-effective review would service the public interest We also seek comment on whether under such a general policy, the Commission should retain the discretion to conduct a pre-effective tariff review in individual cases. We solicit comment on the extent to which Section 204(a) limits our ability to rely on post-effective tariff review, and whether we should establish specific rules and procedures governing requests to review effective tariffs if we decide to place greater emphasis on such reviews in administering LEC tariffs.

13. *Pre-effective Tariff Review of Streamlined Tariff Filings.* Assuming that we continue to undertake pre-effective review of LEC tariffs filed on a streamlined basis under Section 204(a)(3), we solicit comment on what measures, if any, the Commission should establish in order to decide whether to suspend and investigate a transmittal within seven and 15 days. Specifically, we propose that LECs file summaries of the proposed tariff revisions with their tariff filings and an analysis showing that the tariffs are lawful under applicable rules. We solicit comments on whether the benefits of such requirements outweigh the burdens that it would impose on the filing carriers. In addition, we solicit comment on whether we may establish presumptions of unlawfulness for narrow categories of tariffs, such as tariffs facially not in compliance with our price cap rules, that would permit suspension and designation of issues for investigation through abbreviated orders or public notices. We solicit comment on what kinds of tariffs could be accorded this presumption.

14. We also request comment on the appropriate treatment of tariff transmittals that contain rate increases and decreases. We tentatively conclude

that the 15-day notice period should apply to these. Furthermore, carriers wishing to take advantage of the 7-day notice period should file rate decreases in separate transmittals. Moreover, because of the short notice periods, to identify transmittals filed pursuant to Section 204(a)(2), we propose to require LECs to include a label in front of the tariff or a statement in the tariff transmittal indicating whether the tariff contains rate increases, rate decreases, or both. We also request comment on the best method for alerting the staff and interested parties about the contents of tariff transmittals. We additionally solicit comment on whether we should, as a convenience to interested parties, maintain a list of interested parties and provide affirmative notice to them by e-mail when a LEC tariff is filed. We would envision that this affirmative notice would not constitute legal notice of filing and that failure to provide notice for any reason would not extend the notice periods. Nevertheless, this would provide a convenient way for interested parties to learn about the tariffs. Finally, we tentatively conclude that the statutory notice period of seven and 15 refers to calendar days, not working or week days.

15. To the extent that we rely on pre-effective review, we will need to establish new filing periods to suspend and reject LEC transmittals filed on 7/15 days' notice. We propose to require that petitions against LEC tariffs that are effective within 7 or 15 days must be filed within 3 days after the date of the tariff filing and replies 2 days after service of the petition. We propose that determinations of due dates will be made under Section 1.4(j) of the rules, which provides that when a due date falls on a holiday or weekend, the document will be filed on the next business day. We also propose to require that all such petitions and replies will be hand-delivered to all affected parties, at least where the party is a commercial entity. In addition, we propose that in computing time periods, parties should be required to include intermediate holidays and weekends. We solicit comments on these proposals. We also seek comment on whether we should not provide for a public comment period during the 7/15 days' notice period. Instead, we would provide for comment only where a LEC tariff is suspended and investigated. We solicit comment on whether Section 204(a) establishes a right for interested persons to request suspension and investigation that may not be foreclosed.

16. The NPRM points out that the Commission regularly receives requests for confidential treatment of cost data filed with tariff transmittals and also requests under the Freedom of Information Act for cost data for which the carrier has requested confidential treatment. Given the 7/15 day notice period established by the 1996 Act, we believe that the Commission will be unable to resolve these controversies on a case-by-case basis within the 7/15 day period established by the 1996 Act. We thus solicit comment on whether we should routinely impose a standard protective order whenever a carrier claims in good faith that information qualifies as confidential under relevant Commission precedent. We solicit comment on what the terms of a standard protective order should be, whether we should identify in the rules the types of data that would be eligible for confidential treatment, and what those types of data would be.

17. *Annual Access Tariff Filings.* Section 69.3(a) of the Commission's rules requires LECs and the National Exchange Carrier Association (NECA) to submit revisions to their annual access tariff on 90 days' notice to be effective July 1. These revisions are limited to changes in rate levels and therefore are eligible for filing on a streamlined basis. LECs and NECA are also encouraged to file tariff review plans (TRPs) to support the revisions to their rates in the access tariff. With respect to carriers subject to price cap regulation, we propose to require carriers to file a TRP prior to the filing of the annual tariff revisions absent any information on proposed rates. Because the TRP would not include information regarding a LEC's tariffed rates, charges, classification, we tentatively conclude that we may require LECs' TRP filings prior to the filing of the annual access tariff. We seek comment on this approach. We also solicit comment on the filing date that we should establish for the TRP if we adopt this approach. With respect to carriers subject to rate-of-return regulation, we propose to require them to file their TRPs and annual access tariffs that propose rates 15 days prior to their scheduled effective date of July 1.

18. *Investigations.* As noted, Section 402 of the 1996 Act amends Section 294(a) of the Act, effective February 8, 1997, to provide that the Commission shall conclude all hearings initiated under this section within five months after the date the charge, classification, regulation or practice subject to the hearing becomes effective. We solicit comment on whether we should establish procedural rules to expedite the hearing process in light of the shortened period in which the Commission must complete tariff investigations. We also solicit suggestions for reforms that will permit expeditious termination of tariff investigations, such as requiring the filing of form orders, using abbreviated orders without extensive findings, and terminating investigations by a pro forma order that adopts a decisional memoranda of the Common Carrier Bureau. We solicit comment on these approaches to terminating investigations. We also solicit comment on whether we should establish procedures for informal mediation of tariff investigation issues and what those procedures would be.

19. *NPRM Requirements.* The existing rules specifying notice periods for LEC tariffs must be amended to conform to the streamlined notice periods for LEC tariffs established in Section 204(a)(3). Currently Section 61.58 of the Commission's rules, which specifies the notice requirements that dominant carriers must afford the Commission and the public before tariff revisions can go into effect, provide for a notice period ranging from 14 to 120 days, depending on the type of carriers and the type of tariffs at issue. We propose to change Section 61.58 of the Commission's existing rules governing notice periods for LEC tariff filings to make this section consistent with the streamlined notice periods of seven and 15 days required by the 1996 Act. We solicit comment on this proposal. We also propose to permit LECs to file tariffs eligible for streamlined filing on any notice period greater than that permitted under the statute. We solicit comment on this proposal.

VI. Procedural Requirements

A. Ex Parte Presentations

20. This is a non-restricted notice and comment proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda Period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a). Written submission, however, will be limited as discussed below.

B. Initial Regulatory Flexibility Analysis

21. As required by Section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities of the policies and rules proposed in this NPRM of Proposed Rulemaking (NPRM) to implement Section 402(b)(1)(a) of the Telecommunications Act of 1996, which provides for streamlined tariff filings by local exchange carriers. Written public

comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the NPRM provided below in Section VI(D).

22. *Need for and Objectives of the Proposed Rule:* The Commission, in compliance with Section 402 of the Telecommunications Act of 1996, proposes to implement streamlined tariff filing requirements for local exchange carriers (LECs) with the minimum regulatory and administrative burden on telecommunications carriers.

23. *Legal Basis:* The Commission's objective in issuing this NPRM is to propose and seek comment on rules streamlining the LEC tariff filing process, consistent with the overriding goals of the 1996 Act. The legal basis for action as proposed in the Further NPRM is contained in sections 1, 4(i), 4(j), 201–205, 218, 251(b), 251(e), and 332 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 251(b), 251(d), 251(e), 332.

24. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply:* For purposes of this NPRM, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act (SBA), 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the SBA, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1500 employees.

25. *Total Number of Telephone Companies Affected*. Many of the decisions and rules adopted herein may have a significant economic impact on a substantial number of small telephone companies identified by SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year. This number contains a variety of different category of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated. Our rules governing the streamlining of the LEC tariff process apply to LECs. We believe, however, that incumbent LECs are not small businesses for IRFA purposes because they are dominant in their field of operation. In this regard, we have found incumbent LECs to be ''dominant in their field of operation'' since the early 1980's, and we consistently have certified under the RFA that incumbent LECs are not subject to regulatory flexibility analysis because they are not small businesses. In order to remove any possible issue of RFA compliance, we nevertheless tentatively conclude that small incumbent LECs should be included in this IRFA.We seek comment on this tentative conclusion.

Under the new competitive provisions of the 1996 Act, however, there could be a number of new LECs entering the local exchange market that would be considered small businesses. To the extent that such carriers file tariffs and would be considered non-dominant, we do not believe that our rules would create any additional burdens because under section 63.23(c), 47 CFR 63.23(c), non-dominant carriers are permitted to file tariffs on one day's notice. We solicit comment on this analysis. Further, our other proposals that would apply to such carriers, such as streamlined filings, would reduce administrative burdens, to the extent they file tariffs.

26. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange service (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange service. Although it seems certain that some of these carriers are not independently owned and operated, or have fewer than 1500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Tentatively, we conclude that there are fewer than 1,347 small incumbent LECs that may be affected by the proposals in this NPRM. We seek comment on this conclusion.

27. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:* In Section V of this NPRM, we request comment on whether LECs should be required to file with their tariffs a summary of the proposed tariff revisions and an analysis showing that the revisions are lawful under applicable rules. These obligations would arise any time a LEC files a tariff revision. We are unable to estimate the number of times LECs would file tariffs annually, but it could vary from none to 20 or more, for a limited number of carriers. We estimate, however, that, on average, it would take approximately three hours for the LECs to prepare the tariff summary and the analysis at a cost of $80 per hour in professional level and support staff salaries. In addition, LECs subject to price cap regulation would be required to file their tariff review plans (TRP) prior to the filing of their annual tariff revisions. This proposal would not impose a significant burden on the LECs because they currently file TRPs, although at the time they file their annual access tariff. Adoption of this proposal would require that the carriers allocate the resources needed to complete the TRPs prior to their filing of the annual access tariffs. In order to comply with these proposed requirements, carriers would need to utilize tariff analysts and legal and accounting personnel. We believe that entities subject to these requirements have the personnel necessary to meet these requirements since LECs are already required to utilize staff with skills necessary to establish tariffs that comply with Sections 201–205 of the Communications Act. If adopted, these proposals would constitute new reporting requirements, but we believe they are justified in order to assure compliance with Sections 201–205 of the Communications Act. We seek comment on the impact of these proposals on small entities.

28. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Entities and Small Incumbent LECs, and Alternatives Considered.* We believe that our proposed actions to implement the specific streamlining requirements of Section 204(a)(3) of the Communications Act as well as additional steps for streamlining the tariff process minimizes the economic impact on all LEC carriers that are eligible for streamline regulation. For example, our proposal to establish a program for the electronic filing of tariffs will reduce the existing economic

burden on carriers who are now required to file paper tariffs with the Commission.

29. We have considered the alternative of not requiring the LECs to submit the information noted above. We believe, however, that these proposals would not impose a significant burden on price cap carriers and that the minimal burden resulting from these proposals is outweighed by the Commission's need to fulfill its statutory duties. We seek comment on this tentative conclusion and any other potential impact of these proposals on small business entities.

30. *Federal Rules which Overlap, Duplicate or Conflict with these Rules:* None.

C. Initial Paperwork Reduction Act of 1995 Analysis

This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

D. Comment Filing Procedures

In order to facilitate review of comments and reply comments, by both parties and Commission staff, we require that comments be no longer than 40 pages for comments and 20 pages for replies. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments also must clearly identify the specific portion of this NPRM to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the NPRM, such comments must be included in a clearly labelled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) Written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; (3) written material filed in response to direct requests from commission staff, or (4) any proposed rule language. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Jerry McKoy of the Common Carrier Bureau, 1919 M Street, N.W., Room 518, Washington, D.C. 20554. Such a submissions should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode and should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

VII. Ordering Clauses

31. Accordingly, it is ordered that, pursuant to Sections 1 and 4 of the Communications Act of 1934, as amended, 47 U.S.C. 151 and 154, a notice of proposed rulemaking is hereby adopted and that comment is sought on the issues contained therein. Interested parties may file comments on or before October, 9, 1996, and reply comments on or before October 24, 1996.

32. It is further ordered that, the Secretary shall send a copy of this NPRM of Proposed Rulemaking, including the regulatory certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 605(b) and Paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 114, 5 U.S.C. 601 *et seq* (1981).

List of Subjects in 47 CFR Part 69

Telephone.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 96–24464 Filed 9–23–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 96–098, Notice 01]

RIN 2127–AG37

Side Impact Protection Side Impact Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes two amendments to the specifications for the side impact test dummy and to the procedure in NHTSA's side impact protection standard for positioning the dummy in a vehicle for compliance testing purposes. The first amendment would add plastic inserts-spacers to the dummy's lumbar spine. This change is intended to prevent a cable within the spine from snapping, which some manufacturers believe can generate large spikes in the data obtained from the dummy. The second amendment would specify that the ribcage damper piston of the dummy is set during the dummy positioning procedure to the fully extended position prior to the side impact dynamic test. These changes are intended to improve the consistency of the data obtained from the dummy in a side impact crash test.

DATES: Comments on this proposed rule must be received by the agency no later than November 25, 1996.

Proposed effective date: 45 days after publication of a final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, D.C., 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Mr. Stan Backaitis, Office of Vehicle Safety Standards, (telephone 202–366–4912). For legal issues: Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway

Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1990, NHTSA published a rule that established dynamic side impact protection requirements for passenger cars. (See, final rule amending Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection,* 49 CFR 571.214; 55 FR 45722.) The requirements, which became effective September 1, 1993, improve safety by providing protection against injuries to an occupant's thorax and pelvis in a side impact crash.

The requirements provide this protection by placing a side impact dummy (SID) in a vehicle, subjecting the vehicle to a side impact crash test and limiting the amounts of force measured by accelerometer sensors mounted in the thorax and pelvis of the SID. The SID represents an adult male 50th percentile size occupant. At the time of the amendment to Standard 214, specifications for the SID were added to NHTSA's test dummy regulation (see, 49 CFR part 572, subpart F).

Four accelerometers are used to measure the crash test forces. Three accelerometers are mounted in the dummy's thorax and provide acceleration values used in determining the ''Thoracic Trauma Index (TTI(d)).'' TTI(d) is an injury criterion that measures the risk of thoracic injury of a passenger car occupant in a side impact. The fourth accelerometer, mounted in the pelvic cavity, measures the potential risk for pelvic injury. To meet Standard 214's side impact protection requirements, the TTI(d) and pelvic measurements must be below specified maximum values.

Lumbar Spine Inserts

The lumbar spine of the SID is a molded hollow cylindrical rubber element, with bonded circular metal plates that have a hole in the center at each end. A metal cable passes through the center of the lumbar spine cylinder. The top end of the cable is threaded, and the bottom end is shaped like a ball. The threaded end of the cable is fastened with a nut, which can be tightened to provide the desired compression in the lumbar.

A number of motor vehicle manufacturers have informed NHTSA that they have observed spikes in data obtained from side impact tests that increase the variability and the magnitude of the TTI(d). The American Automobile Manufacturers Association (AAMA), representing Ford, Chrysler Corporation and General Motors Corporation, raised the issue of these spikes in a June 29, 1994 letter to the agency. AAMA said that metal-to-metal contact in the SID lumbar spine—

> is inducing data spikes that are of long enough time duration to become part of the data when it is filtered according to the requirements of Standard No. 214. Inclusion of these data spikes in the data increases variability and unwarrranted higher calculations of TTI(d). The spikes could cause manufacturers to redesign their vehicles for no safety reason other than an artifact of the SID. This redesign would increase business costs with no safety benefit to the customer.

AAMA stated that it determined that the noise spikes were caused by (1) the nut and threaded area on top of the metal spine cable striking the inner edge of the hole of the metal top-plate of the lumbar spine when the spine flexes; (2) the ball at the end of the lumbar spine cable popping in and out of the seat of the metal bottom plate when the spine is compressed; and (3) the spine cable nut hitting the thorax to lumbar spine adaptor assembly.

Toyota Motor Corporate Services of North America (Toyota) also informed NHTSA that it was concerned about ''unwarranted spine * * * noise.'' (Letter to NHTSA from Mr. Saburo Inui, October 21, 1994.) Toyota confirmed that the ''noise'' that AAMA found in the data traces also occurred during Toyota's compliance and experimental development tests. The manufacturer requested NHTSA to modify the SID specifications by covering the spine cable with a shrinking plastic tube and placing a rubber washer between the top-plate and the fastening nut.

Subsequently, AAMA recommended specific corrections to the SID to eliminate the spine ringing. In a December 13, 1994 letter (see item 88–07–N03–006 in NHTSA's docket), AAMA recommended adding Delrin spacers in the top and bottom plates of the lumbar spine:

> These spacers would be an efficient and effective way to correct the spine ringing problem in the SID. They would be inserted into the top and bottom plate of the lumbar spine assembly. No modifications to the lumbar spine would be required for their use. This would be cost effective for dummy users, since their inventory of SID lumbar spines, would not have to be returned to dummy manufacturers for rework. * * *

AAMA stated that Ford conducted component testing to determine the effect of using the Delrin inserts on SID performance. Ford found that when the Delrin spacers were used, the data spikes were eliminated. AAMA also said that in subsequent crash tests conducted by member companies, no indications of spine ringing were found when the spacers were used. AAMA provided data to substantiate that relevant SID responses would not be altered by the use of the spacers, i.e., they do not alter the SID responses except for the elimination of spine noise. AAMA also indicated that the spacers are durable and are readily available from Vector Research, a dummy manufacturer.

On March 29, 1995, Mercedes Benz submitted a letter to NHTSA supporting the use of the Delrin spacers, as suggested by AAMA. The manufacturer stated: ''After much testing, we believe the AAMA has provided sufficient evidence that artificial 'noise' is eliminated by using these spacers and that the relevant SID responses are not affected.''

After receiving these letters and comments, NHTSA reviewed data it obtained from tests with the SID for evidence of spine noise (spikes). None of the available agency experimental or vehicle compliance data indicated definitive evidence of data contamination and/or distortion clearly attributable to spine cable snap. Further, it appeared from data submitted by Ford that the ''noise'' that the manufacturer found, while visible primarily in several portions of the raw data traces, would nonetheless be reduced to insignificant values by the specified FIR filter. Also, the noise consisted of extremely short duration spikes occurring earlier or considerably later than the peak acceleration magnitudes in real world crash tests. Usually such short duration spikes do not have much energy content and accordingly, have little or no effect on the true acceleration measurement, particularly since they do not occur at points in time at which the TTIs are at maximum.

While the agency's data did not show that spine noise was problematic, NHTSA conducted further investigations to better understand the manufacturers' concerns. In January 1995, NHTSA determined through component tests of the SID torso that manufacturers were correct that slippage of the SID's spine cable anchorage can produce spikes in the data. (A July 1996 memorandum describing the testing is in Docket 88–07, Notice 3.) In the component tests, the SID upper torso part was rocked while the bottom half was held rigid. The rocking tests caused the cable ends to slip, resulting in the generation of low level ''clicking'' and some minor noise spikes in the ribcage response data. It should be noted, however, that

none of the rocking motions producing spine cable snap generated spikes that had any resemblance in shape or in magnitude to those described by AAMA or Toyota.

NHTSA also found in the rocking tests that the Delrin spacers, which AAMA suggested the agency should use in the SID spine, stopped the cable from slipping and eliminated the clicking noise. In a series of sled tests, NHTSA also determined that the spine inserts produce somewhat less spikelike acceleration responses in the raw unfiltered data compared to tests without the spacers. In a series of impact tests, the agency established that the spacers had no appreciable effects on stiffness of the spine, but resulted in lower magnitudes of spikes in the ''z'' (vertical) acceleration channel. NHTSA also found that the inserts have little, if any, effect on the TTI value measurements. The above tests are described in a July 1996 memorandum in Docket 88–07, Notice 3.

While the agency's data do not support the claims of some manufacturers that spine noise affects the TTI(d) measurements sufficiently to compel the possible redesign of their vehicles, NHTSA has confirmed that the SID spine cable does move in a ''snap-like'' motion that can produce low level spikes that are clearly visible in unfiltered raw data. This ''noise,'' while thus far negligible upon FIR filtering, is nonetheless undesirable in itself as part of the crash event. Any looseness or snapping of components within the SID can produce rattling or unwarranted snapping effects that could potentially distort the data from the dummy and possibly complicate compliance testing. NHTSA therefore tentatively concludes that ''noise'' from movement of the spine cable should be minimized to the extent reasonably possible and that spacers inserted into appropriate places in the spine are a reasonable means of effectively preventing such movement. Accordingly, the agency proposes to amend the specifications for the SID to incorporate use of lumbar spine spacers in Standard 214 compliance tests. Estimated cost of the two spacers is $154. Given that on average, a SID can be used in at least 30 tests, the estimated cost of the spacers is at most $5 per impact test.

Readers are invited to provide test data and comments relating to their experience in testing dummies equipped with lumbar spine spacers.

Proposed Drawing Revisions

To incorporate the use of lumbar spine spacers, this proposal would replace dummy assembly drawing SA–SID–M050, revision A (dated May 18, 1994) with revision B. Revision B would include reference to:

1. Drawing Lumbar Spacers-Lower SID–SM–001, which indicates the spine lower spacer;

2. Drawing Lumbar Spacers-Upper SID–SM–002, which indicates the spine upper spacer; and

3. Drawing 78051–243 to indicate a washer.

The drawings for the SID spine lower spacer and upper spacer are depicted in this NPRM in figures 1 and 2, respectively.

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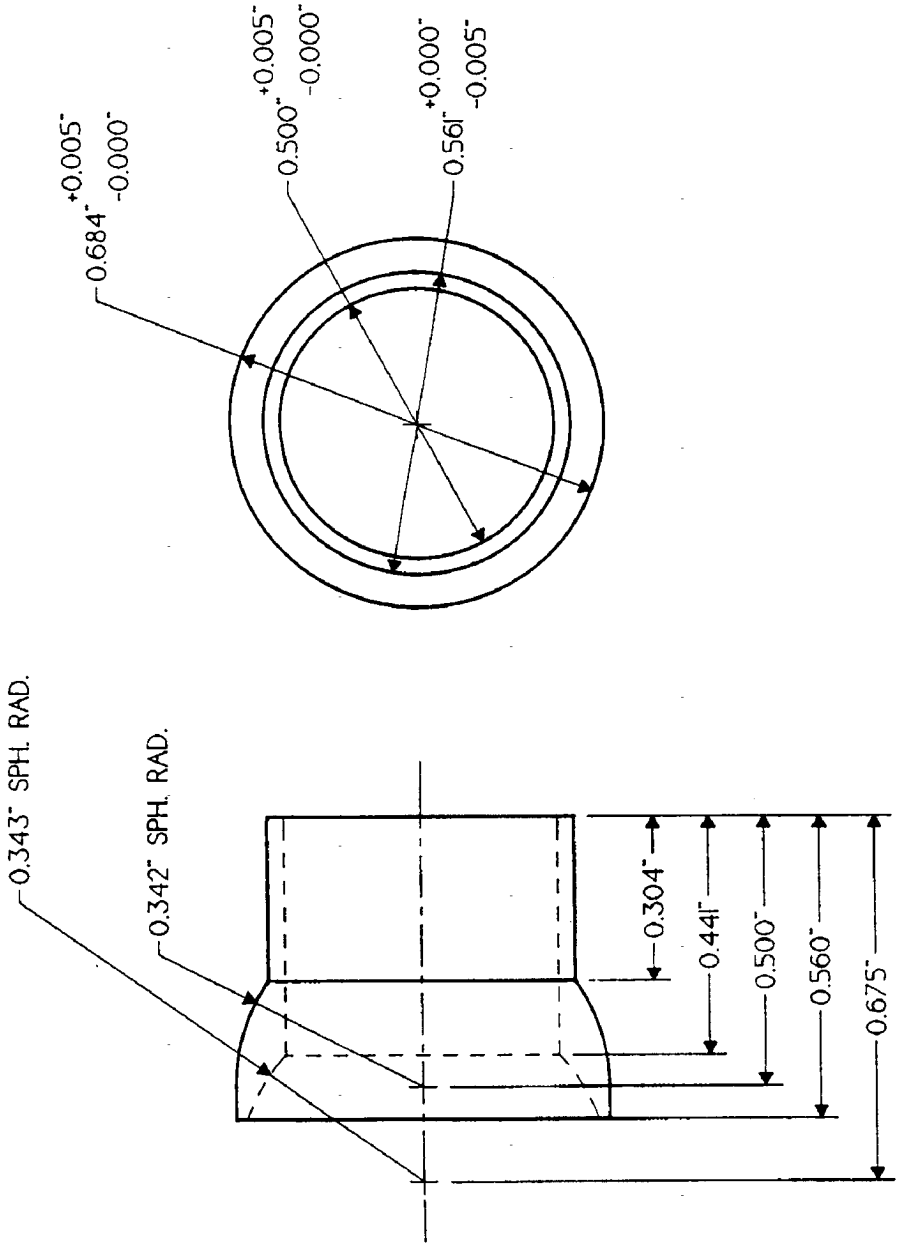

Figure 1 - SID SPINE LOWER SPACER

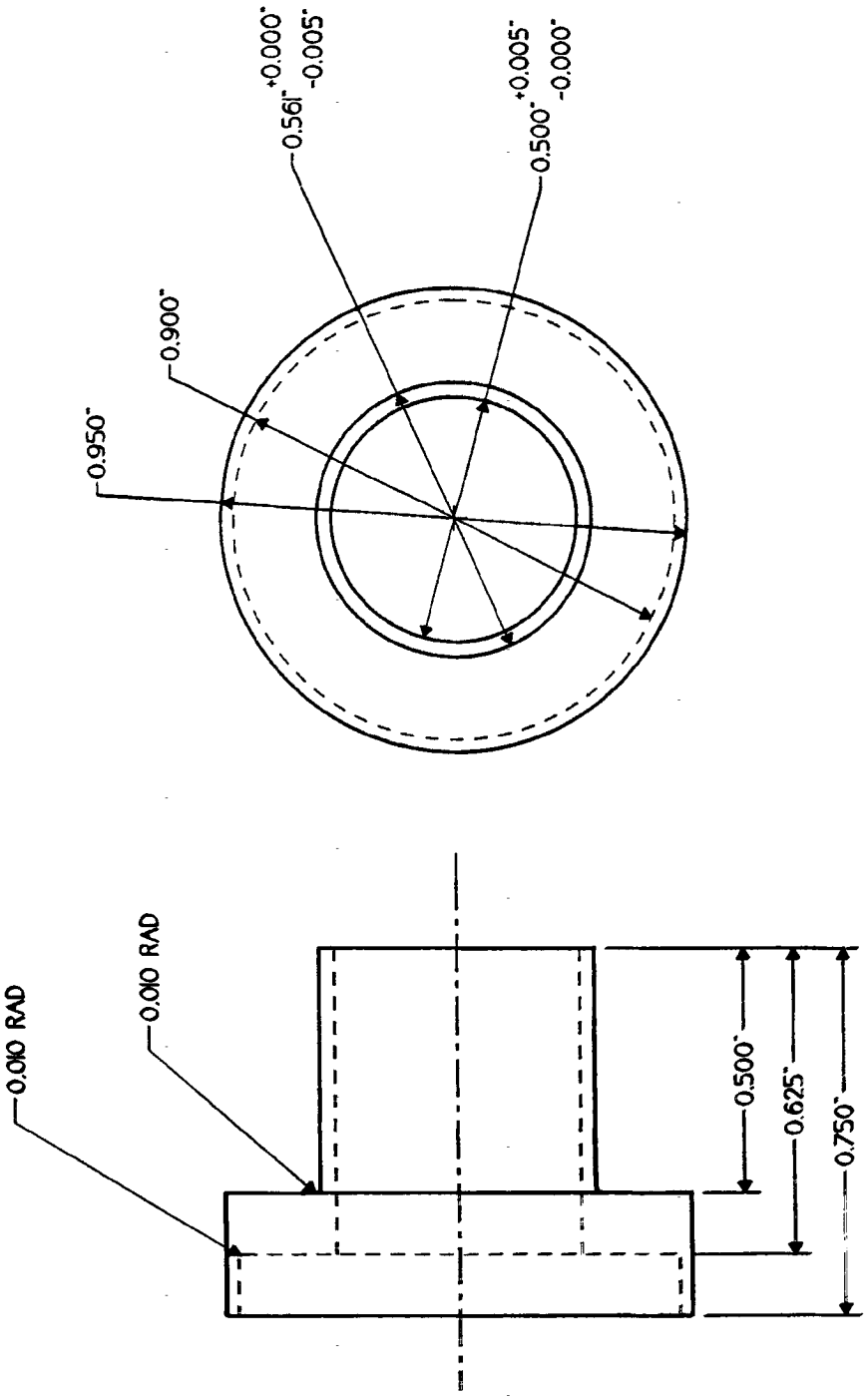

Figure 2 - SID SPINE UPPER SPACER

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The SID users manual, dated May 1994, would be revised to reflect the assembly of the above parts.

Damper Piston Movement

During the sled tests that the agency conducted to evaluate the effect of spacer inserts in the SID lumbar spine, NHTSA observed that the position of the damper piston in the SID ribcage prior to the test had an appreciable effect on the thorax accelerations recorded by the SID. In some tests, some of the thorax responses contained initial short duration damper piston movement in the direction opposite of impact, followed by a longer duration movement in the direction of impact. Upon closer inspection of the damper piston position in dummies set up for impact, NHTSA noted that the damper position was not fully extended in some of the dummies. The agency subsequently found, through tests with the damper piston position purposely fully extended or partly compressed, that the damper piston's initial position can be an important factor in determining whether the dummy's key thorax sensors will record higher or lower accelerations.

In a side impact in which contact occurs first at the dummy's hip level, a dummy's ribcage initially moves (relative to the pelvis bone) toward the impact. When the damper piston is partly compressed prior to impact, the damper piston will fully extend itself during impact until it is arrested by the piston bottoming out against the damper body. The test data indicate that this internal ''collision'' of the damper piston against the damper body is the primary cause of inconsistency in data measurements and the determination of acceleration levels. This collision does not occur when the piston is fully extended within the damper body prior to the test.

To better ensure that the impact response measurements are more repeatable and reproducible, NHTSA proposes to specify in Standard 214's SID positioning procedures that the damper piston is in the fully extended position before the test. Prior to sled tests that showed the apparent damper piston position problem, the agency believed that a piston return spring in the SID would develop sufficient force to set the damper piston in the fully extended position. It appears, however, that the spring is not stiff enough to set the piston in every dummy in the fully extended position and that steps to ensure extension of the piston are necessary.

NHTSA found that the piston can be fully extended by rocking a seated dummy in the lateral direction immediately prior to a test or by reaching through a partly unzipped SID torso jacket and forcing the piston into a full extension. NHTSA believes these measures will ensure that the damper piston is in the fully extended position at the time of the side impact test. NHTSA tentatively concludes that a visual inspection appears to be adequate to ensure that the piston is fully extended and that a position sensor may not be needed. However, it is noted that for users who want assurance, through measurements, that the piston position is fully extended, the SID specifications package already allows use of a ribcage position sensor as an option. The cost of the sensor, with mounting brackets, is approximately $1,025. Comments are requested on whether the SID specifications package should require the use of a sensor.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''non-significant'' under the Department of Transportation's regulatory policies and procedures. The proposed amendments would not require any vehicle design changes but would instead only require minor modifications in the test dummy used to evaluate a vehicle's compliance with Standard No. 214. According to Vector Research, a dummy manufacturer, the two Delrin spacers (lumbar spine inserts) cost $154. Thus far, these have been precision machined parts aimed to satisfy individual low volume orders. The cost is expected to decrease considerably once the other dummy manufacturer (FTSS) begins manufacturing the spacers. If use of spacers increases, dummy manufacturers may seek to produce them through precision molding, which could further reduce the cost of the spacer. The agency has determined that the impacts of the proposed amendments would be so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Modifications to dummy designs affect motor vehicle manufacturers, few of which are small entities. As described above, there would be no significant economic impact on any vehicle manufacturers, whether large or small. Further, since no price increases would be associated with the proposed rule, small organizations and small governmental units would not be affected in their capacity as purchasers of new vehicles.

National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the

complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, NHTSA amends 49 CFR Parts 571 and 572 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

§ 571.214 [Amended]

2. Section 571.214 would be amended by adding an introductory text for S7.1, *Torso*, to read as follows:

S7.1 *Torso*. For a test dummy in any seating position, the piston of the torso damper (SID 083) is fully extended.

* * * * *

PART 572—ANTHROPOMORPHIC TEST DUMMIES

3. The authority citation for Part 572 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

4. In section 572.41, the introductory text of (a), and paragraphs (a)(4) and (c) would be revised to read as follows:

§ 572.41 General description.

(a) The dummy consists of component parts and component assemblies (SA–SID–M001A, revision B, dated [*to be determined*] which are described in approximately 250 drawings and specifications that are set forth in § 572.5(a) with the following changes and additions which are described in approximately 85 drawings and specifications (incorporated by reference; see § 572.40):

* * * * *

(4) The lumbar spine consists of the assembly specified in subpart B (§ 572.9(a)) and conforms to drawing SA 150 M050 and drawings subtended by SA–SID–M050 revision B, dated [*to be determined*], including the addition of Lumbar Spacers-Lower SID–SM–001 and Lumbar Spacers-Upper SID–SM–002, and Washer 78051–243.

* * * * *

(c) Disassembly, inspection, and assembly procedures; external dimensions and weight; and a dummy drawing list are set forth in the Side Impact Dummy (SID) User's Manual, dated [*to be determined*] (incorporated by reference; see § 572.40).

* * * * *

5. In section 572.43, paragraph (a) would be revised to read as follows:

§ 572.43 Lumbar spine and pelvis.

(a) When the pelvis of a fully assembled dummy (SA–SID–M001A revision B, dated [*to be determined*] (incorporated by reference; see § 572.40) is impacted laterally by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section, the peak acceleration at the location of the accelerometer mounted in the pelvis cavity in accordance with § 572.44(c) shall be not less than 40g and not more than 60g. The acceleration-time curve for the test shall be unimodal and shall lie at or above the +20g level for an interval not less than 3 milliseconds and not more than 7 milliseconds.

* * * * *

Issued on September 16, 1996.

L. Robert Shelton,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–24206 Filed 9–23–96; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 186
Tuesday, September 24, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Agricultural Research, Extension, Education, and Economics Advisory Board Membership

The Secretary of Agriculture has established the National Agricultural Research, Extension, Education, and Economics Advisory Board pursuant to section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), and has appointed members to the Advisory Board.

Terms of appointment are from one to three years. Each member will represent at least one of 30 areas of constituent interest, as specified in the legislation. The Advisory Board's first meeting is September 16–18, 1996 in Washington, DC. (Federal Register, Vol. 61, No. 170, page 45932, Friday, August 30, 1996).

Twenty-nine members selected so far are Frank Busta, St. Paul, MN, University of Minnesota; Zerle Carpenter, Bryan, TX, Texas A&M University; Gail Cassell, Birmingham, AL, University of Alabama-Birmingham; Mary Clutter, Washington, D.C., National Science Foundation; John Dillard, Leland, MS, self-employed farmer; Dan Dooley, Visalia, CA, self-employed farmer; Kirk Ferrell, Arlington, VA, National Pork Producers Council; Hector Garza, Silver Spring, MD, American Council on Education; David Gipp, Mandan, ND, United Tribes Technology College; Jerry Don Glover, Muleshoe, TX, Texas Corn Producers Board; I. Miley Gonzalez, Las Cruces, NM, New Mexico State University; Victor Lechtenberg, W. LaFayette, IN, Purdue University; Thomas Lyon, Shawano, WI, Cooperative Resources International; Sam Minor, Washington, PA, The Springhouse Co.; Janice Nixon, Sterling, CO, Colorado State University Cooperative Extension; Russ Notar, Wheaton, MD, National Cooperative Business Association; Ralph Paige, LaGrange, GA, Federation of Southern Cooperatives; Skee Rasmussen, Belvidere, SD, self-employed rancher; Richard Ross, Ames, IA, Iowa State University; Barbara Schneeman, Davis, CA, University of California-Davis; Ann Sorensen, Oregon IL, American Farmland Trust; Dolores Spikes, Baton Rouge, LA, Southern University and A&M College System; Joe Stewart, Battle Creek, MI, Kellogg Co; Barbara Stowe, Manhattan, KS, Kansas State University; Larry Tombaugh, Cary, NC, North Carolina State University; Ann Vidaver, Lincoln, NE, University of Nebraska-Lincoln; Kaye Wachsmuth, Washington, D.C., USDA's Food Safety and Inspection Service; Ronald Warfield, Gibson City, IL, Illinois Farm Bureau; Steven Watts, Colfax, WA, The McGregor Co.; and Nancy Wellman, Miami, FL, Florida International University.

Ex-Officio Members of the Advisory Board are Agriculture Secretary, Dan Glickman; Acting Under Secretary of Agriculture for Research, Education, and Economics, Catherine Woteki; Administrator of Agricultural Research Service, Floyd Horn; Administrator of the Cooperative State Research, Education, and Extension Service, Bob Robinson; Administrator of the Economics Research Service, Susan Offutt; and Administrator of the National Agricultural Statistics Service, Don Bay. The Executive Director of the Advisory Board is Deborah Hanfman, who formerly served as the USDA Coordinator to the President's National Science and Technology Council. Questions should be directed to the Office of the Advisory Board; Research, Education, and Economics at (202) 720–3684.

Done at Washington, DC., this 11th day of September 1996.

Catherine E. Woteki,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 96–24452 Filed 9–23–96; 8:45 am]
BILLING CODE 3410–22–M

Forest Service

Stillwater Mining Company Tailing Impoundment Expansion, Stillwater County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, as co-lead agency with the Montana Department of Environmental Quality (MT DEQ) will cooperatively participate in the preparation of an environmental impact statement (EIS). The EIS will disclose the environmental effects due to construction and operation of a new tailing impoundment facility located approximately 7 miles northeast of the present Stillwater Mine facility. The area involved in this proposal involves both federal land, administered by the Forest Service, and private lands over which the MT Department of Environmental Quality has jurisdiction.

The Director of the Montana Department of Environmental Quality and the Custer National Forest Supervisor are the officials responsible for approving SMC's proposal to construct and operate its tailing storage facility and other associated structures which are discussed in this Scoping Statement.

The Forest Supervisor has the authority for regulating all activities and uses of National Forest system lands. The Custer National Forest Supervisor will decide whether to approve Stillwater Mining Company's amendment to their approved Plan of Operations as detailed in the Proposed Action, or whether to approve an alternative to the Proposed Action. The Forest Supervisor also has the ability to prescribe mitigation measures as conditions of approval.

DATES: A public meeting will be held in Absarokee, MT on September 24, 1996 in order to identify issues to be addressed in this environmental analysis. Written comments concerning the scope of this analysis must be received by October 31, 1996.

ADDRESSES: Written comments concerning this analysis should be sent to Rand Herzberg, Beartooth District Ranger, Custer National Forest, HC 49, Box 3420, Red Lodge, MT 59068.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and EIS should be directed to Pat Pierson, Interdisciplinary Team Leader, Beartooth Ranger District. Phone (406) 446–2103.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Stillwater Mining Company has been in operation since 1986. SMC is currently in the process of expanding ore production from 1000 tons per day to 2000 tons per day. At the present rate of production, SMC's permitted tailings impoundment will reach its ultimate capacity by the year 2003.

Given the projected life of the current tailing facility, SMC must proceed with the permitting of an additional tailings storage options in order to provide the capacity needed to manage tailings and waste rock in the long term. The purpose of this Proposed Action is to permit an integrated waste management plan to provide for the long term management of SMC's waste stream.

SMC has submitted a proposal to amend its plan of operations in accordance with Federal and State regulations. The General mining law of 1872 grants all US citizens the right to explore, develop, and produce mineral resources on Federal lands open to mineral entry. SMC currently operates the only economically viable platinum/palladium mine in the western hemisphere, and accounts for five percent of world production. Thirty-five percent of US consumption of platinum/palladium is accounted for by the automotive industry in catalytic converters, required as a result of the Clean Air Act of 1990, 32 percent by electronics, nine percent is used for medical/dental purposes, six percent by the chemical industry, and 18 percent is used for a variety of purposes, based on their chemical inertness and refractory properties (USDI, 1991).

The purpose of this environmental analysis is to disclose the environmental effects of Stillwater Mining Company's Proposed Action and alternatives to that Proposed Action. Although effects of other potential activities within the Stillwater Complex are included in this analysis, the decision document resulting from this environmental analysis will make a decision only on the proposed expansion.

Description of Proposed Activity

The Stillwater Mining Company has submitted a proposal to the Forest Service and the Montana Department of Environmental Quality to construct and operate a new tailing impoundment at the Hertzler Ranch. The Hertzler Ranch is situated approximately seven miles northeast of the mine site. Construction of the Hertzler Impoundment would utilize local borrow materials, therefore this amendment proposes to store waste rock on permitted waste rock sites located on the east side of the Stillwater River. This area is currently occupied by a part of the mine waste water disposal system, known as the Land Application and Disposal system (LAD). Once construction begins on the east side waste rock storage area, the LAD system would be moved. To insure that production levels can continue uninterrupted and that operational flexibility is maintained, SMC will continue to utilize the existing tailing impoundment. As currently proposed, the two impoundments would be operated in concert.

This amendment proposes to expand the current permit area to include the Hertzler Ranch. The existing mine permit area encompasses approximately 1,340 acres. Within this area, approximately 255 acres will ultimately be disturbed by permitted mining activities. Of this 255 acres of disturbance, well over 120 acres have been disturbed by past mining and exploration activities. This amendment will result in approximately 271 acres of additional disturbance and will increase the total permitted acreage by 1,112.

Past amendments to SMC's original Plan of Operation have utilized a defined production rate as a means to quantify and qualify the possible environmental impacts due to construction and operation of the mine facility. This approach has limited SMC's operational flexibility and made it difficult to take advantage of the economic scale inherent during mine expansion. Consequently, this amendment proposes to establish a project footprint within production rates, but will be variable as dictated by project economics and infrastructure capacity.

Tailing Impoundment

Construction of the proposed tailing embankments will incorporate staged expansion using local borrow materials, identified during the 1981 site investigation program. The embankment would be constructed using the centerline method to a height of approximately 155 feet (elevation 5,036 feet) at the deepest section and would accommodate storage of approximately 13 million cubic yards (12.3 million tons) of tailings. This facility will cover approximately 146 acres after construction.

SMC is proposing to utilize a high density polyethylene (HDPE) liner within the impoundment. A system of spine underdrains would be incorporated to promote consolidation of the tailings mass during operations. Seepage collected from the underdrains and from the embankment filter drains would drain to recycle ponds situated around the perimeter of the facility. From the recycle ponds, this tailings water would be pumped back to the tailings impoundment for reuse in the milling and concentrating process.

Reclamation of the outer embankment slope will be conducted concurrently with operations of the facility, thereby minimizing impacts and fugitive dust. A minimum of 12 inches of soil and/or sub-soil will be stripped and stored for final reclamation prior to the excavation of the impoundment or borrow areas. Final reclamation of the waste storage site will incorporate waste rock and vegetation in a mosaic pattern similar to that permitted on the existing tailing impoundment.

Post closure settlement is predicted to vary between 1 to 10 feet, depending on the distribution and final depth of tailings within the impoundment. Therefore, an average surface capping layer of approximately five feet will be required (including two feet of topsoil).

Mine Waste Rock Production and Management

Waste rock from the mine which is not used for construction of portal pads, roads, mine backfill, or other uses, has typically been utilized in the construction of the tailing embankment. However, due to the long haul distance between the place of waste rock origin (mine location south of Nye) and the place of use (Hertzler location) waste rock will not be utilized in the construction of the new tailings impoundment. Therefore, this proposal includes provisions to increase the size of the east side waste rock pad and visibility berm permitted in the 2,000 tons per day Environmental Impact Statement and Record of Decision. Expansion of the East Side waste rock storage site would add approximately 10 million cubic yards of storage capacity and would encompass an area of approximately 80 acres.

The East Side waste rock facility would be constructed in a phased approach as outlined below:

Stage 1 Construction

Will consist of the placement of a visibility and containment berm to approximately the 5,000 feet elevation level. This visibility berm would be constructed to approximate a natural feature. Vertical and horizontal relief will vary in order to break up visual lines.

Once completed, the visibility and containment berm will be topsoiled and revegetated. The toe of the berm will be placed a minimum of 100 feet from riparian zones.

Embankment slopes will vary between 3h:1v to 2h:1v, with shallower slopes maintained along the Stillwater River corridor to minimize erosion during potential maximum flood (PMF) events. Erosion control will be provided through revegetation of the berm and by placing rip rap in drainage areas to prevent stormwater run-off. Existing monitoring wells and piezometer locations covered by the waste stockpile construction will be either relocated, capped, or extended.

A portion of the emergency pipeline containment pond, which was designed to contain stormwater and spillage from the pipelines crossing the Stillwater River, will be partially inundated by the Stage 1 berm. The remaining storage capacity in this area will exceed one million gallons and will provide over 41 hours of emergency storage at a pumping rate of 400 gallons per minute.

Stage 2 Construction

Construction would continue as in Stage 1. The berm would continue to be located a minimum of 100 feet from riparian vegetation. Construction would continue to resemble a natural feature by varying horizontal and vertical lines. Embankment slopes would vary between 3h:1v to 2h:1v. Monitoring wells, storm water collection ponds, and toe ditches will be added along the downstream slopes of the waste embankment. Montana Power's utility line would be relocated to the downstream toe of the embankment.

Stage 3 Construction

During the Stage 3 construction phase, the waste rock storage area will be raised to approximately the 5,050 feet elevation, with no further extension of the Stage 1 and Stage 2 toes. The visibility and containment berm would be constructed with slope gradients varying from 3h:1v to 2h:1v and revegetated. Waste rock placement would be conducted in lifts behind the berm and each lift would be graded and compacted by a dozer. The compaction of each lift will minimize fugitive particulate emissions from the pad and water infiltration due to precipitation. Selective shaping of the top cap will sculpture areas of the embankment to approximately the 5,080 ft. elevation. By varying the elevation of the cap, the final pad would blend with the natural terrain.

Pipeline Systems

The pipeline system will consist of five pipelines and extend for approximately 34,000 feet. Two pipelines will be dedicated for slurry transport, one pipeline for mine water (LAD), one for return reclaim process water and one line will be utilized as a spare. The pipelines will range from 6 to 12 inches in diameter. The pipeline system will be located along Stillwater County roads 419 and 420 right-of-way and be buried at a depth of approximately five feet (below the frost line). The pipeline system will include flow, moisture, and pressure instrumentation along with inspection ports of physical pipe wear measurements. In areas of potential environmental concerns the pipeline system will be either double lined and/or placed in a conduit system. Emergency containment facilities will be placed on both sides of river or stream crossings and near any booster pumping station.

Pipeline material will be either steel or high density polyethylene (HDPE). HDPE offers advantages of lower friction, greater abrasion resistance, no corrosion problems, and generally lower installation and purchase cost. A HDPE pipeline would require the installation of a booster pump station due to the line pressure restrictions inherent to HDPE pipe.

Steel pipe offers an advantage over HDPE with its ability to support higher pressures. Use of an all steel pipeline could allow a single high pressure pump station to be installed at the thickener, eliminating the need for a booster pump station somewhere along the pipeline corridor. A collection pond together with a reclaim system would be required at the mid-point of the line. This facility would allow for a pipeline to be drained in the event of a line rupture.

Reclamation will be conducted concurrently with pipeline construction. Following compaction of fill over the pipelines, 12 inches of salvaged soil will be replaced and seeded. Seeding of the reclaimed pipeline trench will conducted utilizing SMC's approved low elevation seed mix.

Forest Plan Direction

The area involved in this proposal is within Management Area E as described in the Custer National Forest Land and Resource Management Plan (1986). The management goal for Management Area E is as follows:

To facilitate and encourage the exploration, development, and production of energy and mineral resources for the National Forest System lands. Other resources will be considered and impacts will be mitigated to the extent possible through standard operating procedures, and on a limited basis, through special lease stipulation necessary to manage key surface resources. Energy/mineral development will not be precluded by these resource concerns within legal constraints. Efforts will be made to avoid or mitigate resource conflicts. If the responsible official determines that conflicts cannot be adequately mitigated she/he will resolve the conflict in accordance with the management goal and, if necessary, in consultation with affected parties (Forest Plan, page 58).

Preliminary Issues

The Forest Service and Department of Environmental Quality Interdisciplinary Team (IDT) has preliminarily identified five issues which will be addressed in the environmental analysis. These issues have been identified due to the possibility that the existing environmental conditions related to these issue areas may change as a result of the construction, operation, and reclamation of the Hertzler Tailing Impoundment facility. These issue areas include;

Water Quality and Quantity; Aesthetics (Including Noise, Air Quality, and Visual Effects); Tailing Impoundment Stability; Social/Economic Effects; and Wildlife and Fisheries.

Preliminary Alternatives

Potential tailing impoundment locations for Stillwater Mining Company's mine have been explored since the early 1980's. These previous site investigations include those conducted by Wahler Associates (1981), the US Forest Service and the Montana Department of State Lands during development of the 1985 EIS, the US Forest Service and the Montana Department of State Lands during the development of the 1992 EIS, and recent investigations, undertaken by Knight Piesold for this proposed amendment to SMC's Plan of Operations.

After reviewing past studies, Knight Piesold (1996) concluded that the evaluation process should be expanded to include consideration for the disposal of both tailing and waste rock in the overall waste management strategy. As a result of the 1996 Knight Piesold investigation, four waste management alternatives were selected for further study by Knight Piesold. The four management alternatives, incorporating tailings impoundment options selected from the previous assessments are summarized below:

Option A: Expansion of the existing tailing impoundment by Modified Centerline construction, with concurrent development and operation of a new tailing facility at the Hertzler Ranch site.

Option B: Expansion of the existing tailing impoundment by Centerline construction and extension of the

downstream toe, and concurrently development and operation of a new tailings facility at the Hertzler Ranch site.

Option C: Expansion of the existing tailing impoundment by Modified Centerline construction, and concurrent development and operation of a new tailings facility located on the East Side of the Stillwater River.

Option D: Development of a new tailings facility at the Hertzler Ranch site, with some tailings disposal into the existing permitted impoundment when required to facilitate ease of operations (Proposed Action).

Each of these alternatives includes development of a new tailings impoundment and expanded waste rock storage capacity in order to provide sufficient storage for long term operations.

EIS Availability

The draft environmental impact statement (DEIS) is expected to be available for public review during the spring of 1997. After a 45 day public comment period, the comments received will be analyzed and considered by the Forest Service and Montana Department of Environmental Quality during the preparation of the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by the fall of 1997. The regulatory agencies will respond to the comments received in the FEIS. The Custer National Forest Supervisor and the Director of the Montana Department of Environmental Quality are the responsible officials for this EIS and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agencies to reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: September 11, 1996.

Nancy T. Curriden,

Forest Supervisor, Custer National Forest.

[FR Doc. 96–24444 Filed 9–23–96; 8:45 am]

BILLING CODE 3410–11–M

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on October 18, 1996 at the Olympic National Forest Headquarters Office, 1835 Black Lake Blvd. S.W. Olympia, Washington. The meeting will begin at 9:30 a.m. and end 3:30 p.m. Agenda Topics are: (1) Introduction of New Members; (2) Review of Field Trip; (3) Watershed Restoration Program for FY97; (4) Wynoochee Watershed Analysis Summary; (5) Late Successional Reserve Assessments Discussion; (6) Open Forum; and (8) Public Comments. All Olympic Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kate Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211 or Ronald R. Humphrey, Forest Supervisor, at (360) 956–2301.

Dated: September 18, 1996.

David M. Yates,

Land Management Planning Staff Officer.

[FR Doc. 96–24400 Filed 9–23–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091296D]

Marine Mammals; Permit No. 898 (P772#65)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of amendment to permit 898.

SUMMARY: Notice is hereby given that on August 19, 1996 permit no. 898, issued to The National Marine Fisheries Service, Southwest Fisheries Science Center, La Jolla, CA 92038, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Suite 13130 Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the regulations governing the taking and importing of marine mammals (50 CFR Part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking,

importing, and exporting of endangered fish and wildlife (50 CFR Part 222).

The permit has been amended under the provisions of Section 109(h) of the Marine Mammal Protection Act and Section 10 of the Endangered Species Act to authorize the capture and translocation of two Hawaiian monk seals (*Monachus schauinslandi*) (one from the islands of Oahu and one from the island of Kauai) to any of the following islands in order to protect their health and well-being and the safety of the public: the Big Island of Hawaii, Kahoolawe Island, Nihoa Island, or Johnston Island. The seals can be flipper tagged and satellite tagged, and recaptured as necessary. This amendment is issued pursuant to § 216.33(e)(6) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) which allows waiver of the 30-day public comment period.

Issuance of this amended permit as required by the ESA was based on a finding that such amendment: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this amended permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 12, 1996.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources.

[FR Doc. 96–24323 Filed 9–23–96; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on October 2, 1996 from 1:00 p.m. to 5:00 p.m. in the first floor hearing room of the Commodity Futures Trading Commission (Room 1000), Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The agenda will consist of:

I. Opening Remarks by Chairperson Brooksley Born;

II. Report from USDA's Cooperative Research Education Extension Services on their new initiative, ''Managing Change in Agriculture;''

III. Presentation on the New York Cotton Exchange's Potato Futures and Options Contract;

IV. Presentations on the Butter Futures and Options Contract offered by the Coffee, Sugar and Cocoa Exchange and the Chicago Mercantile Exchange;

V. Update on Audit Trial;

VI. Update on the issue of Hedge-to-Arrive Contracts;

VII. Update from USDA Risk Management Agency on the FAIR Act ''Section 192—Education Program;''

VIII. Presentation on AgMAS: A Study of the Performance of Agricultural Market Advisory Services from Dr. Scott Irwin of the Ohio State University;

IX. Presentation on AgRisk: A Financial Engineering Approach to Risk Management of Farm Firms from Dr. Scott Irwin of The Ohio State University;

X. Presentation by Members of the CFTC Agricultural Advisory Committee on Risk Management Education Programs;

XI. Other Committee Business; and

XII. Closing Remarks by Commissioner Joseph Dial.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was crated by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the sixth renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Joseph B. Dial, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Kimberly Harter, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Harter in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on September 18, 1996.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–24487 Filed 9–19–96; 3:17 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Collection No. 9000–0130]

Proposed Collection; Comment Request Entitled Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0130).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate. The OMB clearance currently expires on December 31, 1996.

DATES: *Comment Due Date:* November 25, 1996.

ADDRESSES: Comments regarding this burden estimate of any other aspect of the collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–130, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Peter O'Such, Office of Federal Acquisition Policy, GSA (202) 501–1759.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the North American Free Trade Agreement (NAFTA) Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and NAFTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and NAFTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .167 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, 1,140; responses per respondent, 5; total annual responses, 5,700; preparation hours per response, .167; and total response burden hours, 952.

Dated: September 19, 1996.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 96–24428 Filed 9–23–96; 8:45 am]

BILLING CODE 6820–34–P

Department of the Navy

Notice of Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Disposal and Proposed Reuse of Naval Station Treasure Island, San Francisco, CA

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the California Environmental Quality Act (CEQA) Section 15170, the Department of the Navy, in coordination with the City and County of San Francisco, California, announces its intent to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the disposal and proposed reuse of the Naval Station Treasure Island (NSTI) property and structures located in the City and County of San Francisco, California. The Navy will be the lead agency for NEPA documentation and the City and County of San Francisco will be the lead agency for CEQA documentation. The Defense Base Closure and Realignment Act (Public Law 101–510) of 1990, as implemented by the base closure process of 1993, directed the Navy to close NSTI. NSTI is scheduled for closure in September, 1997.

NSTI is located in the San Francisco Bay between the cities of Oakland and San Francisco within the boundaries of the City and County of San Francisco. NSTI occupies about 403 acres on Treasure Island, with about 150 military buildings, 908 family housing units, and nine barrack-style housing facilities. NSTI also occupies approximately 115 acres on Yerba Buena Island, with approximately 10 military buildings and 105 housing units. Yerba Buena Island is bisected by the San Francisco-Oakland Bay Bridge.

The EIS/EIR will address Navy disposal of the property, including a Navy ''no action'' alternative, and the potential environmental impacts resulting from community reuse development proposed in the Naval Station Treasure Island Reuse Plan prepared by the City and County of San Francisco. The reuse plan's Land Use Plan, dated July 1996, will serve as the basis for the EIS/EIR reuse alternatives. Three community reuse alternatives are expected to be evaluated in the EIS/EIR: the Maximum Density Alternative, Reduced Density Alternative, and Residential Neighborhood Alternative. The Navy ''no action'' alternative will evaluate NSTI as closed but remaining in federal caretaker status.

The Maximum Density Alternative includes publicly oriented uses such as a theme park, sports field, film production center, hotels, museum, and conference center. It also includes institutional uses, educational and child care facilities, a fire fighting training school, community services, recreational facilities, public open space along the Treasure Island shoreline and Yerba Buena western hillside, and up to 2,800 residential units. The Reduced Density Alternative includes the publicly oriented, institutional uses, and recreational facilities identified above, as well as the public open space along the Treasure Island shoreline and Yerba Buena western hillside. There would be no housing development on Treasure Island under this alternative. Up to 300 housing units would be located on Yerba Buena Island. The Residential Neighborhood Alternative focuses on the creation of new housing opportunities at NSTI, with up to 5,000 dwelling units located on Treasure Island, and an additional 235 units located on Yerba Buena Island. It includes publicly oriented uses such as a film production center and a small hotel, as well as institutional uses, educational and child care facilities, recreational facilities, and public open space along the Treasure Island shoreline and Yerba Buena western hillside.

ADDRESSES: Federal, state and local agencies, and interested individuals are encouraged to participate in the scoping process to assist the Navy in determining the range of issues and reuse alternatives to be addressed. A public scoping meeting to receive oral and written comments will be held on Wednesday, October 9, 1996, at 7:00 p.m., in the Port Commission Room, Third Floor, Suite 3100, Ferry Building, San Francisco, California. Navy and City and County of San Francisco representatives will briefly summarize the community reuse planning process, the environmental impact analysis processes, and will then solicit public comments. In the interest of allowing everyone a chance to participate, each speaker will be requested to limit oral comments to five minutes. Longer comments should be summarized at the public meeting and/or mailed to the address listed at the end of this announcement.

FOR FURTHER INFORMATION CONTACT: All written comments must be submitted within 30 days of the published date of this notice to Ms. Mary Doyle (Code 185), Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–5006, telephone (415) 244–3024, fax (415) 244–3737. For information concerning the EIR, please contact the City and County of San Francisco, Planning Department, Ms. Carol Roos, telephone (415) 558–6378, or fax (415) 558–6426. For further information regarding the Naval Station Treasure Island Reuse Plan, please contact Ms. Alison Kendall, City and County of San Francisco, Planning Department, telephone (415) 558–6290, or fax (415) 558–6426.

Dated: September 19, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–24427 Filed 9–23–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.015]

National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies and Foreign Language and Area Studies Fellowships Program

Notice inviting applications for new awards for fiscal year (FY) 1997

Purpose of Program: The National Resource Centers Program makes awards to institutions of higher education for general assistance in strengthening nationally recognized centers of excellence in foreign language and area or international studies. National Resource Centers awards are used to support undergraduate centers or comprehensive centers, which include undergraduate, graduate, and professional school components. The Foreign Language and Area Studies Fellowships Program makes awards to institutions of higher education for fellowship assistance to meritorious students undergoing graduate training in modern foreign languages and related area or international studies. Foreign Language and Area Studies Fellowship monies are used to support academic year and summer fellowships.

Eligible Applicants: Institutions of higher education, public and private, or combinations of those institutions.

Deadline for Transmittal of Applications: November 4, 1996.

Deadline for Intergovernmental Review: January 3, 1997.

Applications Available: September 27, 1996.

Available Funds: For FY 1997 the Administration has requested $19,035,400 for new awards under the National Resource Centers Program and $13,400,000 for the Foreign Language and Area Studies Fellowships Program. However, the actual level of funding is contingent on final congressional action.

Estimated Range of Awards: $125,000 to $225,000 for the National Resource Centers Program.

Estimated Average Size of Awards: $173,050 for the National Resource Centers Program.

Estimated Number of Awards: 110 grant awards for the National Resource Centers Program; for the Foreign Language and Area Studies Fellowships Program 580 academic year fellowships and 300 summer fellowships. It is anticipated that 130 institutions will receive grants of fellowship allocations.

Foreign Language and Area Studies Fellowships Program Cost-of-Education Allowance: For the new grant cycle, student subsistence allowance levels will be $10,000 for an academic year fellowship and $2,400 for a summer fellowship. Institutional payments in lieu of tuition will be $10,000 for an academic year fellowship and $3,600 for a summer fellowship. Summer fellowships to be used on campuses other than that of the student's home institution may also include travel awards of $1,000 or the actual cost of travel, whichever is less. The amount of the award will not include allowances for dependents. Foreign Language and Area Studies Fellowships Program budgets should, therefore, reflect costs of $20,000 per academic year fellowship, $6,000 per summer fellowship requested, and summer travel awards, if requested.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months, beginning August 15, 1997.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; (b) The regulations in 34 CFR Part 655; and (c) The final regulations as published elsewhere in this issue of the Federal Register, which will be codified in 34 CFR Parts 656 and 657.

Priorities for National Resource Centers

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 656.23(a)(1), (a)(2), and (a)(4), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this program only applications that meet this absolute priority:

Projects that include teacher training activities on the language, languages, area studies, or general topic of the center.

Invitational Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priorities. However, an application that meets these invitational priorities does not receive competitive or absolute preference over other applications:

Projects that include the following activities:

(1) Development and implementation of plans for evaluating and improving foreign language programs in ways compatible with developing national standards.

(2) Summer intensive language programs that are conducted in cooperation with other institutions of higher education and offer instruction providing the equivalent of a full academic year's work in language training.

(3) Special library projects for acquiring or cataloging, or both, unique collections carried out in cooperation with other institutions of higher education.

(4) Initiating or strengthening linkages between language and area studies programs and professional disciplines, including, but not limited to, business, education, forestry, hotel management, journalism, medicine, nursing, pharmacy, public administration, public health, and social work.

(5) Developing new courses or curricula in disciplines and issues that are currently underrepresented in the Center's basic program.

Page Limits for the Application Narrative: 35 pages for a single institution application; 45 pages for a consortium application. FOR

Applications or Information Contact: Cheryl Gibbs, Karla Ver Bryck Block, or Sara West, U.S. Department of Education, 600 Independence Avenue, S.W., Suite 600–B, Portals Building, Washington, D.C. 20202–5331. Telephone (202) 401–9798. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov/); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1122.

Dated: September 18, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–24461 Filed 9–23–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Great Lakes Chemical Corporation

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Great Lakes Chemical Corporation of West Lafayette, Indiana,

an exclusive license to practice the invention described in U.S. Patent No. 5,032,657, entitled ''Polymerizable 2(2-Hydroxynaphthyl) 2H-Benzotriazole Compounds'' which relates to polymerizable compounds effective as UV light stabilizers and absorbers. The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than November 25, 1996.

ADDRESSES: Office of Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION: Colette C. Muenzen, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–0343.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Great Lakes Chemical Corporation, of West Lafayette, Indiana, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 5,032,657, and has a plan for commercialization of the invention. The patent is entitled ''Polymerizable 2(2-Hydroxynaphthyl) 2H-Benzotriazole Compounds,'' useful for synthesizing polymerizable compounds effective as UV light stabilizers and absorbers.

The exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms, conditions and restrictions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209(c), unless, within 60 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents.

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, D.C., on September 17, 1996.

Eric J. Fygi,

Deputy General Counsel.

[FR Doc. 96–24391 Filed 9–23–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM97–118–000]

Arkansas Western Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1996.

Take notice that on September 13 1996, Arkansas Western Pipeline Company (AWP) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 4 to become effective October 1, 1996.

AWP states that the filing established the revised Annual Charge Adjustment (ACA) rate effective October 1, 1996, for AWP's transportation rates. The ACA rate is designed to recover the charge assessed by the Commission pursuant to Part 382 of the Commission's Regulations.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24384 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–383–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1996.

Take notice that on September 13, 1996, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 105
Third Revised Sheet No. 106
First Revised Sheet No. 119
First Revised Sheet No. 134
Third Revised Sheet No. 135
First Revised Sheet No. 141
First Revised Sheet No. 142
Fourth Revised Sheet No. 143
Second Revised Sheet No. 155
First Revised Sheet No. 160
First Revised Sheet No. 161
First Revised Sheet No. 162
Fourth Revised Sheet No. 163
Second Revised Sheet No. 175
First Revised Sheet No. 182
First Revised Sheet No. 183
Second Revised Sheet No. 195
Second Revised Sheet No. 200
Second Revised Sheet No. 201
Second Revised Sheet No. 364
Original Sheet No. 364A
Second Revised Sheet No. 369
First Revised Sheet No. 373
Original Sheet No. 373A

CNG requests an effective date of November 1, 1996, for these tariff sheets.

CNG states that this filing is submitted as an application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988) and Part 154 of the Rules and Regulations of the Commission.

CNG states that the purpose of this filing is to provide CNG and its customers with the ability to negotiate rates as provided in the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, issued January 31, 1996.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24377 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–4–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1996.

Take notice that on September 12, 1996, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with proposed effective dates of September 1, 1996, October 1, 1996 and November 1, 1996, respectively.

Eastern Shore states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Columbia Gas Transmission Corporation (Columbia) under Columbia's Rate Schedules SST and FSS the costs of which are included in the rates and charges payable under Eastern Shore's Rate Schedules CWS and CFSS effective September 1, 1996, October 1, 1996 and November 1, 1996, respectively. This tracking filing is being filed pursuant to Section 24 of the General Terms and Conditions of Eastern Shore's FERC Gas Tariff to reflect changes in Eastern Shore's jurisdictional rates.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commission.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24385 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–766–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

September 18, 1996.

Take notice that on September 5, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP96–766–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point in Mobile County, Alabama for Clarke-Mobile Counties Gas District (Clarke-Mobile), under the blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is an file with the Commission and open to public inspection.

FGT asserts that Clarke-Mobile requested FGT to construct a new delivery point, to which FGT will transport gas on an interruptible basis on a self-implementing basis pursuant to Subpart G of Part 284 of the Commission's Regulations. FGT proposes to construct, operate and own the new delivery point, which will include a 6-inch tap, electronic flow measurement equipment, approximately 100 feet of connecting pipe, and any other related appurtenant facilities necessary for FGT to deliver gas up to a maximum of 28,800 MMBtu per day and up to 10,512,000 MMBtu per year. FGT claims that Clarke-Mobile will reimburse FGT for all costs directly and indirectly incurred for the construction of the new delivery point. FGT estimates that the total cost of the proposed construction is $100,000 and includes federal income tax gross-up.

FGT states that the end use of the gas will be primarily for industrial, commercial, and residential.

FGT states that Clarke-Mobile will construct, operate, and own certain non-jurisdictional facilities which will include the metering facility and any other related appurtenant facilities necessary for receiving up to a maximum of 28,800 MMBtu/d. FGT asserts that the design and installation of these facilities will be in accordance with FGT's specifications and approval and that it will have the right to inspect such facilities during and after construction. FGT states that the proposed request will have no impact on FGT's peak day delivery, however, annual deliveries could be affected, up to 10,512,000 MMBtu.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24371 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–787–000]

Florida Gas Transmission Company; Notice of Application To Abandon

September 18, 1996.

Take notice that on September 13, 1996, Florida Gas Transmission Company (Applicant), 1400 Smith Street, Houston, Texas 77002, filed pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon, a certificated transportation service with Gulf Oil Corporation, predecessor in interest to Chevron USA, Inc. (Gulf). The service is Applicant's Rate Schedule X–4 in its FERC Gas Tariff, Original Volume No. 3. Applicant's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that under this transportation service it transported unprocessed gas to the Warren Processing Plant where liquefiable hydrocarbons were delivered to Gulf. Applicant sates that the transportation service is no longer needed.

Any person desiring to be heard or make any protest with reference to said application should on or before October 9, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24373 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–330–001]

Florida Gas Transmission Company; Notice of Compliance Filing

September 18, 1996.

Take notice that on September 13, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheet to become effective September 2, 1996:

Substitute Third Revised Sheet No. 188A

FGT states that on August 2, 1996, FGT filed revised tariff sheets (August 2 Filing) that would permit FGT and its shippers to agree to negotiated rates pursuant to the Policy Statement issued by the Commission on January 31, 1996 in Docket No. RM95–6–000 (Policy Statement). Included in the proposed tariff revisions was a procedure to be used by FGT to evaluate competing bids for firm capacity which reflected different rate forms. In the August 30 Order, the Commission accepted the tariff sheets included in the August 2 Filing subject to FGT revising its methodology for evaluating competing bids to consider the present value of only the reservation charge or similar guaranteed revenue stream for the purpose of allocating capacity.

FGT states that it is making the instant filing in compliance with the Commission's August 30 Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24375 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–92–001]

Mojave Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

September 18, 1996.

Take notice that on September 11, 1996, Mojave Pipeline Company (Mojave), tendered for filing and acceptance the following tariff sheet, pursuant to Subpart E Part 154 of the Commission's Regulations, to its FERC Gas Tariff, First Revised Volume No. 1, to become effective October 1, 1996:

Eigth Revised Sheet No. 11

Mojave states that it is tendering this tariff sheet to reflect that the ACA to be collected for the fiscal year beginning October 1, 1996 is to be $0.0020 per MMBtu.

Mojave states that the instant filing should replace the filing made by Mojave by letter dated August 30, 1996 which stated that ACA would be $0.0023.

Mojave requested waiver of the notice requirements of Section 154.207 of the Commission's Regulations to permit the tendered tariff sheet to become effective on October 1, 1996.

Mojave states that copies of the filing were served upon all of Mojave's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24383 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–80–001]

Tarpon Transmission Company; Notice of Change in Annual Charge Adjustment

September 18, 1996.

Take notice that on September 12, 1996, Tarpon Transmission Company (Tarpon) tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, Substitute Ninth Revised Sheet No. 96A, with a proposed effective date of October 1, 1996.

Tarpon states that the purpose of the filing is to replace Ninth Revised Sheet No. 96A, filed with the Commission on August 29, 1996, with Substitute Ninth Revised Sheet No. 96A in order to reflect the correct Annual Charge Adjustment surcharge. Tarpon requests that the Commission allow Substitute Ninth Revised Sheet No. 96A, as well as the remaining tariff sheets submitted on August 29, 1996, to become effective October 1, 1996.

Tarpon states that copies of the filing have been mailed to its customers and interested parties.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24381 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–9–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

September 18, 1996.

Take notice that on September 12, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing to become part of its FERC GAS Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1996:

Ninth Revised Sheet No. 20
Seventh Revised Sheet No. 21
Thirteenth Revised Sheet No. 21A
Eighteenth Revised Sheet No. 22
Thirteenth Revised Sheet No. 22A
Third Revised Sheet No. 23A
First Revised Sheet No. 23C
Sixth Revised Sheet No. 26
Seventh Revised Sheet No. 26A
Ninth Revised Sheet No. 26B
Fifth Revised Sheet No. 27
Second Revised Sheet No. 29A

Tennessee states that the purpose of the filing is to reflect a decrease in the ACA rate adjustment to Tennessee's commodity rates for the period October 1, 1996 through September 30, 1997. The tariff sheets reflect a decrease of $.0003 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of $.0019.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24380 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–781–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

September 18, 1996.

Take notice that on September 11, 1996, Texas Eastern Transmission Corporation (Applicant), P. O. Box 1642, Houston, Texas 77251, filed in Docket No. CP96–781–000 for approval under Section 157.205 to construct and operate two delivery points in Maury County, Tennessee.

Appliant proposes to construct a delivery point on its 30-inch Line No. 10 and on its 36-inch Line No. 25. Applicant proposes these delivery points to provide additional firm gas deliveries for the Horton Highway Utility District (Horton Highway). Horton is municipal distributor and an existing customer of the Applicant.

Horton Highway will reimburse Applicant for the cost of installing the facilities. Costs will be $74,300. Applicant states that the firm transportation service will be provided under its SCT Rate Schedule.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24372 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–365–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1996.

Take notice that on September 13, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for to become part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective October 1, 1996.

Transco states that the purpose of the filing is to supplement Transco's August 30, 1996, Order No. 582 Compliance Filing in Docket No. RM95–3 (August 30 Filing) to reflect the correct billing units for Transco's Rate Schedule SS–1. In Transco's August 30 Filing the billing units for Transco's Rate Schedule SS–1 were incorrectly calculated. In order to correct this error, Transco is submitting tariff sheet herein as a replacement for the SS–1 tariff sheet included in the August 30 Filing. Transco states that included in Appendix B attached to the filing are details regarding the computation of the revised Rate Schedule SS–1.

Transco states that copies of the filing are being mailed to each of its SS–1 customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24376 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–17–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1996.

Take notice that on September 13, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing, to be effective October 1, 1996.

Transco states that the purpose of the instant filing is to track rate changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its rate schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The tracking filing is being made pursuant to tracking provisions under Section 4 of the Transco's Rate Schedule FR–NT.

Transco states that included in Appendix B attached to the filing is an explanation of the rate changes and details regarding the computation of the revised Rate Schedules FT–NT rates.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24379 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–271–004]

Transwestern Pipeline Company, Notice of Proposed Changes in FERC Gas Tariff

September 18, 1996.

Take notice that on September 13, 1996 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1996:

118th Revised Sheet No. 5
23rd Revised Sheet No. 5A
15th Revised Sheet No. 5A.01
15th Revised Sheet No. 5A.02
15th Revised Sheet No. 5A.03
10th Revised Sheet No. 5A.04
2nd Revised Sheet No. 5B.01
Original Sheet No. 5B.02
3rd Revised Sheet No. 6B

On May 2, 1995, Transwestern filed a Stipulation and Agreement (Settlement) in order to resolve a number of issues, including the allocation of approximately $51.3 million of costs associated with Southern California Gas Company's (SoCalGas) imminent relinquishment of 457,281 MMBtu of capacity to Transwestern effective November 1, 1996. On July 27, 1995, the Commission approved the proposed Settlement (July 27th Order). On August 11, 1995 Transwestern filed tariff sheets to comply with certain provisions of that Settlement that became effective on September 1, 1995. Other provisions of the Settlement did not become effective until November 1, 1996. The purpose of this filing is to submit tariff sheets to comply with those provisions of the Settlement that become effective on November 1, 1996 in compliance with the Commission's July 27th Order.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24374 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–384–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1996.

Take notice that on September 13, 1996, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, proposed to be effective October 1, 1996:

Third Revised Sheet No. 1
Seventh Revised Sheet No. 6
Original Sheet No. 6A
Third Revised Sheet No. 15
Original Sheet No. 15A
Original Sheet No. 15B
Original Sheet No. 15C
Original Sheet No. 15D
First Revised Sheet No. 48
Second Revised Sheet No. 50
Second Revised Sheet No. 52
Second Revised Sheet No. 69
Second Revised Sheet No. 82
Second Revised Sheet No. 83
Second Revised Sheet No. 85
Second Revised Sheet No. 88
Second Revised Sheet No. 90
Second Revised Sheet No. 91
Second Revised Sheet No. 136

Viking states that the purpose of this filing is to establish a new Rate Schedule FT–B, which will be applicable to the expansion capacity approved by the Commission in Docket No. CP96–32–000, and to implement the initial rate approved in the Commission's May 15, 1996 ''Order Issuing Certificate.'' Rate schedule FT–B is substantially identical to Viking's existing FT–A rate schedule, except that it applies only to firm shippers using the expansion capacity.

Viking is also filing to implement the initial incremental demand rate of $7.75 Dth/month approved by the Commission in its May 15, 1996 certificate order. As provide in the Commission's order, this initial rate for FT–B service will be subject to a retroactive ''true-up'' filing after a final accounting for the project has been completed. Viking is also making miscellaneous tariff modifications so that is tariff properly reflects the existence of Viking's new Rate Schedule FT–B.

Viking states that copies of the filing have been mailed to all of its

jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24378 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–82–001]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1996.

Take notice that on September 13, 1996, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Sixth Revised Sheet No. 6, to be effective October 1, 1996.

Viking states that the purpose of this filing is to correct an error in Sixth Revised Sheet No. 6, filed by Viking on August 28, 1996 to implement a reduction to Viking's Annual Charge Adjustment (ACA) surcharge from $0.0023 per dekatherm to $0.0020 per dekatherm, as permitted by Section 154.204 of the Commission's Regulations. Viking states that it inadvertently failed to make a conforming reduction to the ''Rate After Current Adjustment'' column of the tariff sheet, and that the proposed tariff sheet corrects this error.

Viking states that copies of this filing have been mailed to all of its customers and to affected States regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24382 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

Meetings; Notice of Time and Agenda for Working Groups

September 18, 1996.

Filing and Reporting Requirement for Interstate Natural Gas Companies Rate Schedules and Tariffs—Docket No. RM95–3–000.

Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies—Docket No. RM95–4–000

Take notice that the dates for the fourth meetings of the working groups established pursuant to the orders issued in Docket Nos. RM95–3–000 and RM95–4–000 [1] are as follows:

The meeting for Working Group-Forms will begin at *9 a.m., Wednesday, October 9, 1996.*

The meeting for Working Group-Filings will begin at *9 a.m., Thursday, October 10, 1996.*

These meetings will take place in a room at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons are invited to attend. Participation in the working groups is not limited to those who have already signed up. Any parties wishing to make a presentation at the meetings should contact Richard White, PHONE: (202) 208–0491, FAX: (202) 208–0017.

The upcoming working group meetings are intended to be the last in the series of these meetings to complete work on the filing instructions for the FERC Form No. 2 and rate case filings. All outstanding issues will be discussed and resolved at these meetings. If no consensus is reached, the issue will be referred to the Commission for final resolution.

In a notice issued August 15, 1996, the Commission announced the availability of the draft instructions for filing rate cases electronically. Comments were due August 31, 1996. Several comments have been received. To further the discussion process, copies of the comments are available on the Gas Pipeline Data (GPD) portion of the Commission's bulletin board. At the meeting or Working Group-Filings, participants should be prepared to discuss the issues raised in the comments.

Take notice that the draft filing instructions for FERC Form No. 2 are being made available on the GPD portion of the Commission's bulletin board as they are completed. Anyone wishing to submit comments on the Form No. 2 instructions may do so by September 30, 1996. Such comments may be uploaded to the Commission's BBS or mailed to Richard A. White, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington D.C. 20426. Comments may also be e-mailed to Elizabeth.Taylor@FERC.fed.us, Thomas.Brownfield@FERC.fed.us, or Richard.White@FERC.fed.us, or uploaded to the Gas Pipeline Data portion of the Commission's bulletin board. We encourage commenters to submit written comments also on a 3½'' diskette in Rich Text Format or ASCII so they can be posted on the Commission's bulletin board. It is preferable for comments uploaded to the Commission's BBS to be in ASCII format so files may be viewed on-line and easily converted to other software formats.

The upload option, available under the Order No. 581/582 Working Group Menu, is designed to permit members of the public to upload a file to the Commission's bulletin board. To do so, select upload from the Working Group menu. You will be prompted for the File Mask. Enter the drive, directory, if applicable, and the filename. If more than one file is to be uploaded, enter the file mask using wildcard characters for the unique portion of the filename. For example:

File Mask? C:\FERC\Form__11.txt, or
File Mask? C:*tst.wk1 to represent Altst.wk1, Bltst.wk1, etc.

You will be prompted to enter a file description. A file description must accompany every file. The basic file description can be no more than 70 characters. After typing the description, select [send] to associate it with your file. Other menu features are explained under the Help option.

The system will not allow you to upload a file with the same name as a file already on the bulletin board. It is preferable to incorporate your company

[1] Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (October 11, 1995), 72 FERC ¶ 61,300 (1995); and, Revisions to Uniform System of Accounts Form, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 FR 53019 (October 11, 1995), 72 FERC ¶ 61,301 (1995).

initials or some other unique identifier in the file name to distinguish your files from others' files.

Files uploaded to the Commission's bulletin board will not be immediately available for download. The party uploading the file may, however, check the file list to ensure the file uploaded properly.

This document is available for inspection or copying by accessing the Commission Issuance Posting System (CIPS). CIPS and GPD are part of the Commission's electronic bulletin board service providing access to documents issued by or available electronically from the Commission. CIPS and GPD are available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397, if local, or 1–800–856–3920, if long distance.

To access the Commission's bulletin board system, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format.

The Commission's bulletin board system can also be accessed through the FedWorld system directly by modem or through the Internet.

By modem: Dial (703) 321–3339 and logon to the FedWorld system. After logging on, type: /go FERC

Through the Internet: Telnet to: fedworld.gov Select the option: [1] FedWorld Logon to the FedWorld system Type: /go FERC

Or: Point your Web Browser to: http://www.fedworld.gov Scroll down the page to select FedWorld Telnet Site Select the option: [1] FedWorld Logon to the FedWorld system Type: /go FERC

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24370 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

September 18, 1996.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 25, 1996, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda. *Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro 659th Meeting—September 25, 1996, Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–9248, 013, Town of Telluride, Colorado
CAH–2.
Docket# P–9974, 027, Rough and Ready Hydro Company
CAH–3.
Omitted
CAH–4.
Docket# P–2458, 009, Great Northern Paper, Inc.
CAH–5.
Docket# P–2572, 005, Great Northern Paper, Inc.
CAH–6.
Docket# P–2506, 003, Mead Corporation, Publishing Paper Division

Consent Agenda—Electric

CAE–1.
Docket# ER96–2571, 000, Delmarva Power & Light Company
Other#s ER96–1361, 002, Atlantic City Electric Company
CAE–2.
Docket# ER96–2573, 000, Southern Company Services, Inc.
CAE–3.
Docket# EF96–2011, 000, United States Department of Energy Bonneville Power Administration
Other#S EF96–2021, 000, United States Department of Energy Bonneville Power Administration
CAE–4.
Docket# ER96–2637, 000, South Carolina Electric & Gas Company
CAE–5.
Docket# ER96–2338, 000, Northeast Utilities Service Company
CAE–6.
Omitted
CAE–7.
Docket# ER95–1042, 002, System Energy Resources, Inc.
CAE–8.
Docket# ER96–1477, 000, Megan-Racine Associates, Inc.
Other#s EL95–40, 001, Megan-Racine Associates, Inc.
EL95–47, 001, Megan-Racine Associtates Inc.
QF89–58, 005, Megan-Racine Associates, Inc.
CAE–9.
Omitted
CAE–10.
Docket# EC95–16, 006, Wisconsin Electric Power Company and Northern States Power Company, (Minnesota), et al.
Other#s ER95–1357, 006, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
ER95–1358, 007, Wisconsin Energy Company and Northern States Power Company
CAE–11.
Docket# ER91–480, 000, Jersey Central Power & Light Company
CAE–12.
Docket# OA96–11, 000, Long Sault, Inc.
Other#s OA96–14, 000, Central Hudson Gas & Electric Company
OA96–15, 000, Central Louisiana Electric Company, Inc.
OA96–17, 000, Oklahoma Gas & Electric Company
OA96–30, 000, Texas-New Mexico Power Company
OA96–37, 000, Greem Mountain Power Corporation
OA96–38, 000, Long Island Lighting Company
OA96–43, 000, Central Maine Power Company
OA96–50, 000, Union Electric Company
OA96–52, 000, Virginia Electric & Power Company
OA96–68, 000, Sierra Pacific Power Company
OA96–70, 000, Boston Edison Company
OA96–78, 000, Detroit Edison Company
OA96–138, 000, Consolidated Edison Company of New York, Inc.
OA96–140, 000, Tucson Electric Power Company
OA96–141, 000, Rochester Gas & Electric Corporation
OA96–153, 000, Arizona Public Service Company
OA96–154, 000, Central Illinois Public Service Company
OA96–192, 000, Otter Tail Power Company
OA96–194, 000, Niagara Mohawk Power Corporation
OA96–195, 000, New York State Electric & Gas Corporation
OA96–197, 000, Ohio Edison Company and Pennsylvania Power Company
OA96–198, 000, Carolina Power & Light Company
OA96–200, 000, El Paso Electric Company
OA96–204, 000, Cleveland Electric Illuminating Company and Toledo Edison Company
OA96–206, 000, Empire District Electric Company
CAE–13.
Docket# OA96–5, 000, Midwest Energy, Inc.
Other#s OA96–24, 000, Bangor Hydro-Electric Company
OA96–35, 000, Maine Public Service Company
OA96–60, 000, Black Hills Power & Light Company
OA96–72, 000, St. Joseph Light & Power Company
OA96–102, 000, Utilicorp United Inc.
OA96–157, 000, United Illuminating Company

OA96–215, 000, Central Illinois Public Service Company
OA96–222, 000, Northwest Public Service Company
CAE–14.
Docket# ER96–1462, 002, Public Service Company of New Mexico et al.
CAE–15.
Docket# ER92–592, 005, Yankee Atomic Electric Company
CAE–16.
Docket# FA86–55, 003, Union Electric Company
Other#s FA90–46, 002, Union Electric Company
CAE–17.
Docket# ER96–2525, 000, Plum Street Energy Marketing, Inc.
Other#s ER96–2585, 000, Niagara Mohawk Power Corporation

Consent Agemda—Gas and Oil

CAG–1.
Omitted
CAG–2.
Omitted
CAG–3.
Docket# RP96–359, 000, Transcontinental Gas Pipe Line Corporation
CAG–4.
Docket# RP96–362, 000, ANR Pipeline Company
CAG–5.
Docket# RP96–365, 000, Transcontinental Gas Pipe Line Corporation
CAG–6.
Docket# RP96–366, 000, Florida Gas Transmission Company
CAG–7.
Docket# RP96–375, 000, Southern Natural Gas Company
CAG–8.
Omitted
CAG–9.
Omitted
CAG–10.
Docket# RP95–6, 007, Northwest Pipeline Corporation
CAG–11.
Docket# RP95–185, 014, Northern Natural Gas Company
Other#s RP95–185, 015, Northern Natural Gas Company
RP95–185, 016, Northern Natural Gas Company
CAG–12.
Omitted
CAG–13.
Docket# RP96–324, 000, West Texas Gas, Inc.
Other#s RP96–377, 000, West Texas Gas, Inc.
TA97–1–35, 000, West Texas Gas, Inc.
CAG–14.
Docket# RP96–348, 000, Panhandle Eastern Pipe Line Company
CAG–15.
Docket# RP96–351, 000, Arkansas Western Pipeline Company
CAG–16.
Docket# RP96–354, 000, Northern Natural Gas Company
CAG–17.
Docket# RP96–361, 000, Koch Gateway Pipeline Company
CAG–18.
Docket# RP96–364, 000, Colorado Interstate Gas Company
CAG–19.
Docket# RP96–367, 000, Northwest Pipeline Corporation
CAG–20.
Omitted
CAG–21.
Omitted
CAG–22.
Docket# PR96–6, 000, Gulf States Pipeline Corporation
CAG–23.
Docket# PR96–7, 000 Transok, Inc.
CAG–24.
Docket# PR96–8, 000, Pacific Gas and Electric Company
CAG–25.
Docket# RP95–64, 000, Tennessee Gas Pipeline Company
Other#s RP95–64, 001, Tennessee Gas Pipeline Company
RP96–292, 000, Tennessee Gas Pipeline Company
CAG–26.
Docket# RP96–238, 001, Texas Gas Transmission Corporation
CAG–27.
Docket# FA94–15, 000, Florida Gas Transmission Company
CAG–28.
Docket# RP96–173, 002, Williams Natural Gas Company
Other#s RP89–183, 062, Williams Natural Gas Company
CAG–29.
Docket# RP96–181, 000, Trunkline Gas Company
Other#s RP96–218, 000, Texas Eastern Transmission Corporation
RP96–224, 000, Panhandle Eastern Pipe Line Company
CAG–30.
Docket# RP96–259, 000, Panhandle Eastern Pipe Line Company
CAG–31.
Docket# RP96–341, 000, Koch Gateway Pipeline Company
CAG–32.
Docket# RP96–267, 000, Gas Research Institute
CAG–33.
Docket# RP96–302, 002, Northern Natural Gas Company
CAG–34.
Docket# RM96–14, 002, Secondary Market Transactions on Interstate Natural Gas Pipelines
Other#s RM96–14, 001, Secondary Market Transactions on Interstate Natural Gas Pipelines
CAG–35.
Docket# RP96–296, 003, K N Interstate Gas Transmission Company
CAG–36.
Omitted
CAG–37.
Omitted
CAG–38.
Docket# RP96–172, 004, Koch Gateway Pipeline Company
CAG–39.
Docket# SA96–2, 001, Teco Pipeline Company
CAG–40.
Docket# AC93–116, 003, Northern Border Pipeline Company
Other#s AC93–116, 002, Northern Border Pipeline Company
AC93–116, 004, Northern Border Pipeline Company
CAG–41.
Omitted
CAG–42.
Docket# AC94–65, 001, Columbia Gulf Transmission Company
Other#s AC94–121, 001, Columbia Gulf Transmission Company
CAG–43.
Docket# RP96–29, 002, National Fuel Gas Supply Corporation
CAG–44.
Omitted
CAG–45.
Docket# RP96–199, 002, Mississippi River Transmission Corporation
CAG–46.
Docket# RP96–200, 001, Noram Gas Transmission Company
CAG–47.
Docket# RP95–457, 003, ANR Pipeline Company
CAG–48.
Omitted
CAG–49.
Omitted
CAG–50.
Docket# MG96–11, 001, Granite State Gas Transmission, Inc.
CAG–51.
Docket# MG96–12, 001, Texas Eastern Transmission Corporation
Other#s MG96–12, 000, Texas Eastern Transmission Corporation
CAG–52.
Omitted
CAG–53.
Omitted
CAG–54.
Docket# CP96–41, 004, Colorado Interstate Gas Company
CAG–55.
Docket# CP96–199, 000, Egan Hub Partners L.P.
Other#s CP96–199, 001, Egan Hub Partners, L.P.
CAG–56.
Docket# CP96–79, 000, Texas Gas Transmission Corporation
CAG–57.
Docket# CP96–97, 000, Eastern Shore Natural Gas Company
CAG–58.
Docket# CP96–520, 000, Columbia Gas Transmission Corporation
CAG–59.
Omitted
CAG–60.
Docket# CP96–207, 000, Williams Gas Processing—Gulf Coast Company, L.P.
Other#s CP96–206, 000, Transcontinental Gas Pipe Line Corporation
CAG–61.
Docket# RP96–262, 000, ANR Pipeline Company
Other#s RP96–263, 000, ANR Pipeline Company

Hydro Agenda

H–1. Reserved

Electric Agenda

E–1. Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters
PR–1. Reserved
II. Pipeline Certificate Matters
PC–1. Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 96–24563 Filed 9–20–96; 10:51 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Notice of Cases Filed From the Week of August 5 Through August 9, 1996

During the Week of August 5 through August 9, 1996, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: September 16, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 5 through August 9, 1996]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 7, 1996	Richards Gulf Service, Dallas, Texas	RR300–287	Request for modification/rescission in the Gulf Oil Refund Proceeding. If granted: The February 7, 1996 Dismissal, Case No. RF300–18709, issued to Richards Gulf Service would be modified regarding the firm's application for refund submitted in the Gulf Oil refund proceeding.
Aug. 8, 1996	Oakland Operations Office, Oakland, California.	VSA–0088	Request for review of opinion under 10 CFR part 710. If granted: The July 17, 1996 Opinion of the Office of Hearings and Appeals, Case No. VSO–0088, would be reviewed at the request of the Office of Safeguards and Security.
Aug. 9, 1996	Dennis J. McQuade, Knoxville, Tennessee.	VFA–0200	Appeal of an information request denial. If granted: The July 29, 1996 Freedom of Information Request Denial issued by Oak Ridge Operations Office would be rescinded, and Dennis J. McQuade would receive access to certain DOE information.
Do	Western Stone Products, Modesto, California.	RR272–244	Request for modification/rescission in the Crude Oil Refund Proceeding. If granted: The March 3, 1994 Dismissal, Case No. RF272–03929, issued to Western Stone Products would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

[FR Doc. 96–24393 Filed 9–23–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed From the Week of August 12 Through August 16, 1996

During the Week of August 12 through August 16, 1996, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: September 16, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 12 through August 16, 1996]

Date	Name and Location of Applicant	Case No.	Type of Submission
July 31, 1996	Cindy David, Montrose, Colorado	VFA–0204	Appeal of an information request denial. If granted: The Freedom of Information Request Denial issued by Western Area Power Administration would be rescinded, and Cindy David would receive access to certain DOE information.
August 12, 1996	Headquarters, Washington, D.C. ...	VSO–0108	Request for hearing under 10 CFR part 710. If granted: An individual employed at Headquarters would receive a hearing under 10 CFR Part 710.
Do	Mary Towles Taylor, Upper Marlboro, Maryland.	VFA–0201	Appeal of an information request denial. If granted: The July 19, 1996 Freedom of Information Request Denial issued by the Office of Human Radiation Experiments would be rescinded, and Mary Towles Taylor would receive access to certain DOE information.
August 13, 1996	William Donnelly, Greensburg, Pennsylvania.	VFA–0202	Appeal of an information request denial. If granted: The July 18, 1996 Freedom of Information Request Denial issued by Pittsburgh Energy Technology Center would be rescinded, and William Donnelly would receive access to certain DOE information.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 12 through August 16, 1996]

Date	Name and Location of Applicant	Case No.	Type of Submission
August 15, 1996	Idaho Operations Office, Idaho Falls, Idaho.	VSO–0109	Request for hearing under 10 CFR part 710. If granted: An individual employed at Idaho Operations Office would receive a hearing under 10 CFR part 710.
Do	U.S. Solar Roof, Bothell, Washington.	VFA–0203	Appeal of an information request denial. If granted: The August 1, 1996 Freedom of Information Request Denial issued by Golden Field Office would be rescinded, and U.S. Solar Roof would receive access to certain DOE information.
August 16, 1996	Idaho Operations Office, Idaho Falls, Idaho.	VSA–0087	Request for review of opinion under 10 CFR part 710. If granted: The July 11, 1996 Opinion of the Office of Hearings and Appeals, Case No. VSO–0087, would be reviewed at the request of the Office of Security Affairs.

REFUND APPLICATIONS RECEIVED

[Week of August 12 through August 16, 1996]

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/12/96 thru 8/16/96	Crude Oil Supplement Refund Applications	RK272–3868 thru RK272–3883.
8/12/96	Presidio Exploration, Inc.	RF352–9.
8/16/96	Mary E. Young	RG272–1043.

[FR Doc. 96–24394 Filed 9–23–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders From the Week of May 20 Through May 24, 1996

During the week of May 20 through May 24, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 16, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 973

Appeals

Arline Jolles Lotman, 5/23/96, VFA–0156

Arline Jolles Lotman (Lotman) filed an Appeal from a determination issued to her by the DOE's Albuquerque Operations Office (AO). In her Appeal, Lotman asserted that the AO did not conduct an adequate search for radiation exposure records she had requested pursuant to the FOIA. The DOE determined that the AO had conducted an adequate search for records and Lotman's Appeal was denied.

Chey Temple, 5/20/96, VFA–0154

Chey Temple filed an Appeal from a denial by the DOE's Richland Operations Office (DOE/RL) of a Request for Information which he had submitted under the Privacy Act. In considering the Appeal, the DOE found that the document requested, his Personnel Security file, contained some information that did not identify the source of the material and thus was not exempt from withholding under Exemption 6 of the FOIA. The Appeal was remanded to DOE/RL for release for all non-identifying portions of the requested material or a new determination adequately justifying continued non-disclosure of this information. Accordingly, the Appeal was granted in part and denied in part.

Industrial Constructors Corporation, 5/23/96, VFA–0144

Industrial Constructors Corporation (ICC) filed an Appeal from a determination issued to it by the DOE's Albuquerque Operations Office (AO). In its Appeal, ICC asserted that the AO improperly withheld portions of documents which it had received pursuant to the FOIA. The DOE determined that while most of the materials had been properly withheld under Exemption 4 of the FOIA, other portions had been improperly withheld under that exemption. Consequently the DOE granted ICC's Appeal in part and remanded this matter to the AO to release portions of the improperly withheld materials or to issue a new determination regarding those materials.

Personnel Security Hearings

Albuquerque Operations Office, 5/23/96; VSO–0077

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 CFR Part 710. The DOE Personnel Security Division alleged that the individual ''[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970'' and ''[e]ngaged in * * * unusual conduct or

is subject to circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.'' On April 2, 1996, the parties convened for an evidentiary hearing in which eight witnesses testified. After carefully examining the record of the proceeding, the Hearing Officer determined that the individual used an illegal drug and engaged in conduct demonstrating that he is not honest, reliable or trustworthy within the meaning of 10 CFR § 710.8(k) and 710.8(l). Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Nevada Operations Office, 5/23/96, VSA–0049

An individual whose access authorization was suspended filed a Request for Review of a DOE Hearing Officer's recommendation against restoration of the access authorization. The individual's access authorization was suspended by the DOE's Albuquerque Operations Office upon its receipt of derogatory information indicating that the individual had made a false statement on a report given to the DOE concerning several arrests for driving under the influence of alcohol (DUI). The DOE also claimed that the individual suffered from alcohol dependence. The Hearing Officer found that the individual did make a false statement in the report, but that he had been rehabilitated from alcohol dependence. In a request for review, the individual submitted some additional documentary information regarding whether he had made a false statement in connection with the reporting of the DUI. The Office of Safeguards and Security filed a response objecting to the Hearing Officer's finding that the individual was rehabilitated. In his Opinion, the Director of the Office of Hearings and Appeals found that the documentary evidence submitted by the individual did not establish that the individual had not made a false report to the DOE. The Director further found that in making the determination that the individual was rehabilitated from alcohol dependence, the Hearing Officer had failed to take into account expert testimony to the effect that the period of abstinence by the individual was too short to make any long term predictions or prognosis regarding risk of relapse. However, the Director stated that a new finding on this issue was not necessary since he would not in any event recommend that the individual access authorization be restored.

Request for Exception

Heller & Sons, Inc., 5/23/96, VEE–0016

Heller & Sons, Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering any gross inequity or serious hardship. Accordingly, the DOE issued a Decision and Order determining that the exception request be denied.

Refund Applications

Parker Refrigerated Service, Inc., 5/21/96, RF272–97316

The DOE issued a Decision and Order granting an Application for Refund filed on behalf of Parker Refrigerated Service, Inc., by Wilson Keller & Associates, in the Subpart V crude oil refund proceeding. The DOE determined that because the firm was in bankruptcy, the refund should be sent to the Trustee of the bankruptcy proceeding. The refund granted to Parker was $18,446.

Tesoro Petroleum Corporation/Texaco Inc., et al. , 5/23/96, RF326–74, et al.

Eight firms sought refunds in the Tesoro Petroleum Corporation special refund proceeding. Each of these eight firms was a small refiner that had received ''*Delta/Beacon*'' exception relief from the Oil Entitlements Program, or was affiliated with such a small refiner. The DOE noted that *Delta/Beacon* exception relief generally operated to insulate the recipient from the effects of any overcharges. As a result, firms would generally not be entitled to refunds for periods in which they received exception relief. However, the DOE found that it would impose an inordinate burden on the agency to determine the effect of exception relief upon an applicant's right to a refund where the refund sought was small. Consequently, for purposes of administrative efficiency, the DOE found that it would not consider the effect of exception relief where, as here, the applicants were relying upon a presumption of injury. The DOE stated that it would continue to consider the receipt of exception relief when evaluating applications that abandon the presumption of injury to seek a larger refund. Accordingly, the refund applications were approved.

The 341 Tract Unit of the Citronelle Field/Consumers Power Company, Inc., 5/23/96, RF345–2

The DOE issued a Decision and Order, granting a refund application filed by Consumers Power Company in The 341 Tract Unit of the Citronelle Field refund proceeding. The DOE determined that the applicant's refund should be based on the proportionate impact of the Citronelle exception relief on the applicant's November 1980 entitlements position. The DOE applied that standard and determined that the applicant should receive a refund of $68,650. Accordingly, the application was granted in part.

The 341 Tract Unit of the Citronelle Field/Pennzoil Products Company, et al., 5/23/96, RF345–44 et al.

The DOE issued a Supplemental Order disbursing $15,905 to Pennzoil Products Company from an escrow account in connection with The 341 Tract Unit of the Citronelle Field. Pennzoil Products Company received a refund as a non-litigant refiner. The disbursement was made pursuant to a Settlement Agreement that was approved by the U.S. District Court for the Southern District of Texas on December 6, 1995.

The 341 Tract Unit of the Citronelle Field/Texas City Refining, Inc. et al., 5/23/96, RF345–1, et al.

The DOE issued a Supplemental Order disbursing $196,906 from an escrow account in connection with The 341 Tract Unit of the Citronelle Field. The disbursements were made pursuant to a Settlement Agreement that was approved by the U.S. District Court for the Southern District of Texas on December 6, 1995.

Wheless Drilling Company, 5/21/96, RR272–138

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Wheless Drilling Company in the Subpart V crude oil refund proceeding. Wheless had failed to submit documents verifying its gallonage claim in its original application, and it was dismissed. However, since Wheless has submitted those documents and good cause for its delay in submitting this material, it was granted a refund. The refund granted to Wheless in this Decision was $42,277.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public

Reference Room of the Office of Hearings and Appeals.

ATLANTIC RICHFIELD COMPANY/M.J. ROEDER DISTRIB., INC. ET AL	RF304–14142	05/23/96
CHAMPAIGN LANDMARK, INC.	RF272–97121	05/23/96
CHICO DAIRY COMPANY	RF272–97257	05/20/96
CITRONELLE/NATIONAL COOPERATIVE REFINERY ASSOC. ET AL	RF345–33	05/23/96
FARMERS COOPERATIVE ELEVATOR ET AL	RF272–94143	05/23/96
FIRST NATIONAL SUPERMARKETS, INC.	RF272–98808	05/21/96
ROADRUNNER TRUCKING, INC	RF272–98942	.....
FRED A. DENENKAMP ET AL	RK272–2470	05/20/96
GENERAL FREIGHT SYSTEMS	RF272–90239	05/21/96
VERMONT MARBLE CO	RF272–98189	.....
GULF OIL CORPORATION/BLACK-PURSLEY HEATING OIL CO. ET AL	RF300–15231	05/23/96
GULF OIL CORPORATION/C.M. BULLOCK GULF	RR300–0271	05/20/96
GULF OIL CORPORATION/LOESCH'S DOWNTOWN GULF	RF300–21833	05/20/96
GULF STATES UTILITIES COMPANY	RK272–03557	05/21/96
HUNTSVILLE HOSPITAL ET AL	RK272–00830	05/20/96
INTERNATIONAL DETECTIVE SERVICE ET AL	RF272–85643	05/23/96

Dismissals

The following submissions were dismissed:

Name	Case No.
CONTINENTAL INSURANCE COMPANY	RF272–74601

[FR Doc. 96–24392 Filed 9–23–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders From the Week of March 25 Through March 29, 1996

During the week of March 25 through March 29, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 16, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 965

Week of March 25 Through March 29, 1996

Appeals

Keith E. Loomis, 3/25/96, VFA–0104

Keith E. Loomis filed an Appeal from a denial by the DOE's Office of Naval Reactors of a request for information that he filed under the Freedom of Information Act (FOIA). In considering the information that was withheld, pursuant to a review by the Director of Naval Reactors, as classified and Naval Nuclear Propulsion Information under Exemptions 1 and 3 of the FOIA, the DOE determined that all of previously withheld material must continue to be withheld. Accordingly, the Appeal was denied.

Phoenix Rising Communications, 3/26/96, VFA–0116

Phoenix Rising Communications (Phoenix) filed an Appeal from a determination issued by the DOE's Oakland Operations Office (Oakland) in response to a request from Phoenix under the Freedom of Information Act (FOIA). Phoenix sought documents related to Lawrence Livermore National Laboratory's Site 300. In considering the Appeal, the DOE found that Oakland performed an adequate search and followed procedures which were reasonably calculated to uncover the material sought by Phoenix. Accordingly, the Appeal was denied.

William H. Payne, 3/26/96, VFA–0128, VFA–0137, VFA–0138, VFA–0139, VFA–0140, VFA–0141

William H. Payne filed Appeals from three determinations and two letters, and a Motion for Reconsideration of Decision and Order, all of which concerned requests under the Freedom of Information Act (FOIA). In appealing three DOE Albuquerque Operations Office (DOE/AL) determinations, Mr. Payne challenged (1) the adequacy of the search for documents containing the names of retired military personnel currently employed at Sandia National Laboratories (SNL); (2) the adequacy of the search for husband-wife pairs employed at either SNL or DOE–AL; and (3) the denial of a requested fee waiver for law firm invoices. Mr. Payne also sought review of DOE's handling of three requests for information and a letter issued by the University of California for records containing the names of husband-wife pairs employed at the Los Alamos National Laboratory (LANL). Lastly, Mr. Payne sought review of a Decision and Order concerning retired military personnel currently employed at LANL. In considering the Appeals, the DOE found that records which might contain responsive information on husband-wife pairs and retired military personnel at SNL were not agency records subject to the FOIA. Moreover, the DOE found that DOE–AL performed an adequate search of its documents for husband-wife pairs employed at DOE–AL. Accordingly, these two appeals were denied. With respect to the fee waiver, the DOE found that Mr. Payne had not demonstrated at least some capability to disseminate the information received from the law firm billing invoices to the public. Therefore, Mr. Payne's fee waiver request was denied. In considering the two letters, the DOE found that they were not

determinations with respect to either the three requests for information or the request for husband-wife pairs employed at LANL. Thus, the DOE dismissed the Appeals concerning the letters. Lastly, the DOE found that in his Motion for Reconsideration, Mr. Payne had not provided any additional information or shown changed circumstances that would lead the DOE to alter its prior Decision. Accordingly, the Motion for Reconsideration was denied.

Remedial Order

Chevron U.S.A. Inc., 3/25/96, LRO–0004

Chevron U.S.A. Inc. (Chevron) filed a Statement of Objections to a Proposed Remedial Order (PRO) issued to Chevron by the Economic Regulatory Administration (ERA) on March 26, 1992. In the PRO, the ERA alleged that as a result of its participation in the DOE Tertiary Incentive Program (TIP), Chevron received excess tertiary incentive revenue attributable to its first sales of domestically produced crude oil during the period January 1980 through January 27, 1981, in violation of 10 C.F.R. §§ 212.78, 212.73, 212.74 and 205.202. The PRO required that Chevron make restitution for this alleged violation in the amount of $124,989,588 (later amended to $167,268,897), plus interest. In considering the substantial record developed in the proceeding, the DOE found that although Chevron's TIP reports reflected the firm's receipt of excess ''tertiary incentive revenue'' by regulatory definition, the firm had not in fact received any excess amount of actual revenue as a result of its participation in the TIP. Accordingly, the PRO was dismissed with prejudice.

Personnel Security Hearing

Albuquerque Operations Office, 3/26/96, VSO–0066

An Office of Hearings and Appeals Hearing Officer issued an opinion against restoring the security clearance of an individual whose clearance had been suspended because the Department had obtained derogatory information that fell within 10 C.F.R. § 710.8 (j) and (l). In reaching his conclusion, the Hearing Officer found that the individual had been diagnosed as dependent on alcohol and did not make an adequate showing of rehabilitation. In addition, the Hearing Officer found that an incident of domestic violence where the individual left the scene before law enforcement officers arrived shows a lack of judgment and reliability within the meaning of 10 C.F.R. § 710.8(l).

Refund Applications

Good Hope Refineries/Marathon Oil Company, 3/25/96, RF339–11

Marathon Oil Company filed an application for refund in the Good Hope Refineries II Refund Proceeding. The DOE denied Marathon's application after finding that Marathon was a spot purchaser and failed to rebut the presumption that spot purchasers were not injured.

Gulf Oil Corp./Hilltop Gulf, 3/27/96, RR300–00268

The DOE dismissed a Motion for Reconsideration filed in the Gulf Oil Corporation special refund proceeding on behalf of Hilltop Gulf. In this Motion for Reconsideration, Wilson, Keller & Associates, Inc. (WKA), a refund filing service, asserted that several facts contained in the original Application were incorrect. On the basis of the new information, WKA requested that the Applicant's name be changed and that gallons purchased under a second Gulf Customer Number be added to the total gallonage claim. The DOE determined that the Motion for Reconsideration was fundamentally different from the original Application and constituted a new application which was barred by the Gulf deadline. Accordingly, the DOE dismissed the Motion.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Clara B. Hale, et al	RK272–2249	03/27/96
Gulf Oil Corporation/Newark Lumber Co./American Home & Hardware	RR300–0259	03/25/96
Margaret H. Nordquist, et al	RK272–01526	03/27/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Airtrails, Inc	RF272–98018
American Trans Air, Inc	RF272–98744
Bay de Noc Oil Co., Inc	RF300–14753
Buffalo Airways, Inc	RF272–98720
Decatur Aviation	RF272–98723
Gulf Air Taxi, Inc	RF272–98725
Pem-Air Limited	RF272–98727
Ron's Arco	RF304–15343
S&B Go., Inc	RF300–16372
Soneco/Northeastern	RG272–00303

[FR Doc. 96–24395 Filed 9–23–96; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces proposed procedures and solicits comments concerning the refunding of $30,000 (plus accrued

interest) in consent order funds. The funds are being held in escrow pursuant to a Stipulation for Compromise Settlement involving Houston-Pasadena Apache Oil Company.

DATES AND ADDRESSES: Comments must be filed on or before October 24, 1996 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107. All comments should conspicuously display a reference to Case Number VEF–0022.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S. W., Washington, D.C. 20585–0107, (202) 426–1575.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the Department of Energy, 10 C.F.R. 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a Stipulation for Compromise Settlement entered into by the Houston-Pasadena Apache Oil Company (Apache) which settled possible pricing violations in the firm's wholesale transactions of motor gasoline during the period October–December 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by Apache and being held in escrow. The DOE has tentatively decided that the funds should be distributed in two stages in the manner utilized with respect to consent order funds in similar proceedings.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107.

Dated: September 16, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Houston-Pasadena Apache Oil Co.
Date of Filing: September 1, 1995
Case Number: VEF–0022

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Regulatory Litigation branch of the Office of General Counsel (OGC)(formerly the Economic Regulatory Administration (ERA)) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on September 1, 1995. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Stipulation for Compromise Settlement (Settlement Stipulation) concerning the Houston-Pasadena Apache Oil Company (Apache).

Background

Apache was a ''reseller-retailer'' of motor gasoline during the period of price controls. Accordingly, Apache was subject to the provisions of 10 C.F.R. Part 212, Subpart F, governing wholesale and retail sales of refined petroleum products. On April 30, 1985, the ERA issued a Proposed Remedial Order (PRO) to Apache concerning Apache's compliance with the price regulations for the period March 1, 1979 through December 31, 1979 (the audit period). Apache provided documents for a more limited period (October–December 1979), and based upon those documents, the ERA found that Apache sold motor gasoline at prices in excess of those permitted under the DOE price regulations governing reseller-retailers during that period. After considering Apache's challenge to the PRO, the OHA issued a final Remedial Order (RO) to Apache on June 19, 1989. See *Houston/Pasadena Apache Oil Company*, 19 DOE ¶ 83,001 (1989). In the RO, the OHA remanded to the ERA a portion of the PRO involving retail transactions and two sales to Dow Chemical Company (Dow) and affirmed the rest of the PRO. The OHA also directed Apache to refund the amount of $160,713 plus interest, this sum representing the overcharges realized by the firm in its wholesale transactions during the period October–December 1979. Apache did not honor its repayment obligation and the matter was referred to the Department of Justice (DOJ) for resolution. On June 4, 1993, the DOJ and Apache executed a Stipulation for Compromise Settlement resolving the issues addressed by the RO. Pursuant to this settlement, Apache agreed to pay $30,000 in full settlement of the DOE claim. Apache's compliance with the settlement has resulted in payment to DOE of $30,000 which we propose to disburse pursuant to the procedures set forth in this Proposed Decision. These funds are presently in an interest-bearing escrow account maintained by the Department of the Treasury.

Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. Generally, it is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the monies obtained from Apache. We therefore propose to grant OGC's petition and assume jurisdiction over distribution of the funds.

Proposed Refund Procedures

A. Refund Claimants

We propose that refund monies be distributed to those wholesale customers which were injured in their transactions with Apache during the period October 1, 1979 through December 31, 1979. These customers of Apache are listed in Appendix A to the RO. If any of these customers are affiliates of Apache, they will be ineligible to apply for a refund in this proceeding.

B. Calculation of Refund Amounts

For claims against the funds obtained from Apache, we propose to establish a maximum potential refund (allocable share) for each of the customers identified in the Apache RO as an overcharged customer. These claimant-specific maximum potential refunds will be based upon the ratio of overcharges incurred by each customer to the total overcharge amount multiplied by the principal amount in the Apache escrow account. A list of the identified Apache customers and their maximum potential refunds is presented in the Appendix to this Proposed Decision. Each successful refund claimant shall also receive a pro rata share of interest which has accrued on the Apache escrow fund account.

C. Showing of Injury/Injury Presumptions

As in previous Subpart V proceedings, we propose that those customers who were ultimate consumers (end-users) of Apache motor gasoline be presumed injured by Apache's alleged overcharges. They will therefore not be required to make a further demonstration of injury in order to receive a refund.

We propose that reseller claimants (including retailers and refiners) who purchased on a regular (non-spot) basis and whose maximum potential refund is $10,000 or less will be presumed injured and therefore need not provide further demonstration of injury. See *E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We realize that the cost to an applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund. Consequently, in the absence of simplified procedures some injured parties would be denied an opportunity to obtain a refund. We further propose that Tesoro Crude (Tesoro

Energy), the only potential reseller claimant whose allocable share exceeds $10,000, may elect either to receive a refund under the small claims presumption outlined above or to pursue its potential refund of $16,034.97. If Tesoro limits its claim to the $10,000 small claims threshold, it need not demonstrate injury beyond the requirements established for other small claimants. If the firm elects to claim its entire potential refund it must establish that it did not pass the Apache overcharges along to its customers.[1] See, *e.g., Office of Enforcement,* 8 DOE ¶ 82,597 (1981). Tesoro can make such an injury showing by demonstrating that it would have kept its motor gasoline prices at the same level had the Apache overcharges not occurred. While there are a variety of means by which a claimant could make this showing, Tesoro should demonstrate that at the time it purchased Apache motor gasoline, market conditions would not permit it to increase its prices to pass through the additional costs associated with the Apache overcharges. In addition, Tesoro must show that it had a ''bank'' of unrecovered product costs sufficient to support its refund claim in order to demonstrate that it did not subsequently recover those costs by increasing its prices. However, the maintenance of a cost bank does not automatically establish injury. See *Tenneco Oil/Chevron U.S.A.,* 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.,* 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./ Koch Industries, Inc.,* 10 DOE ¶ 85,038 (1982).

Finally, we propose to establish a minimum amount of $15 for refund claims. We have found in prior refund proceedings that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. See, *e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 at 85,225 (1982). See also 10 C.F.R. § 205.286(b). This proposed restriction would rule out the participation in this proceeding of two of the firms listed in the Appendix: Gulf Coast Waste, and Parrish Corp.[2]

Conclusion

Refund applications in this proceeding should not be filed until the issuance of a final Decision and Order pertaining to the instant OGC Implementation Petition. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. A copy of this Proposed Decision and Order will be published in the Federal Register and public comments will be solicited.

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in energy conservation programs. The Secretary has delegated these responsibilities to OHA. Any funds in the Apache escrow account the OHA determines will not be needed to effect direct restitution to injured Apache customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Houston-Pasadena Apache Oil Company, Inc. pursuant to the Stipulation for Compromise Settlement executed on June 4, 1993, will be distributed in accordance with the foregoing Decision.

APPENDIX

Applicant	Allocable share
Car Wash	$31.17
Clay Texaco	14.70
DuMac Oil	22.59
Gulf Coast Waste[1]	8.97
Jas Lee	126.06
Joe Lee	3,059.22
John Parker	28.60
Kirby Car Wash	19.83
Lloyd Parrish	288.03
Main Stop	48.90
Parrish Corp.[1]	11.43
Quail Valley Gulf	166.95
So Sweet Energy	2,098.14
Tesoro Energy (Tesoro Crude)	16,034.97
Trio Oil Co.	1,414.17
True Oil Co.	1,119.96
Two Oil Co.	5,489.67
Yims Texaco	16.64
Total	30,000.00

The allocable share entries were generated by multiplying the principal amount in the Apache escrow account by the percentage of total overcharges incurred by each individual claimant as determined by the ERA audit of Apache's business records.

[1] Under $15 threshold. See n.2 of Decision.

[FR Doc. 96–24396 Filed 9–23–96; 8:45 am]

BILLING CODE 6450–01–P

[1] In the event that Tesoro demonstrates that it should be treated as an end-user instead of as a reseller, it will not be required to make this injury showing.

[2] Although the allocable share of Clay Texaco, $14.70, is under the $15 threshold, we have calculated that with interest its refund would exceed $15.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00405A; FRL–5397–3]

Food Safety Advisory Committee Open Meeting; Change In Meeting Locaiton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA announced in the Federal Register of September 4, 1996 the initial meeting of the Food Safety Advisory Committee scheduled for September 26, 1996 (61 FR 46641)(FRL–5395–1). The meeting was originally scheduled to be held at the Ariel Rios Federal Office Building. This notice announces the new location of the September 26, 1996 meeting.

DATES: The date of the meeting is still September 26, 1996, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The new location of the meeting is: The Sheraton City Center, the Hampshire Ballroom, 1143 New Hampshire Avenue, NW., Washington, DC. From the Foggy Bottom metro station, cross Washington Circle to New Hampshire Avenue, or from the Dupont Circle metro station, walk down 21st Street to the corner of M Street and New Hampshire Avenue and turn right on M Street.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach, Designated Official, or Carol Peterson, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-7090; e-mail: fehrenbach.margie@epamail.epa.gov, or peterson.carol@epamail.epa.gov. To contact the Sheraton City Center by telephone call (202) 775-0800.

List of Subjects

Environmental protection.

Dated: September 17, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–24600 Filed 9–23–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5608–8]

Final National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of final NPDES storm water multi-sector general permit for Guam.

SUMMARY: This action provides notice for the issuance of the final multi-sector general permit (MSGP) for storm water discharges associated with industrial activity for the Island of Guam. On September 29, 1995 (60 FR 50804), EPA issued the MSGP to cover storm water discharges associated with industrial

activity in the various states, territories and Indian reservations which are listed below. The September 29, 1995 MSGP is being revised today to include Guam on the list of geographic areas for which discharges may be authorized. The MSGP for Guam also includes certain special conditions required by the Guam EPA pursuant to section 401 of the Clean Water Act (CWA).

EFFECTIVE DATE: This action is effective on September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, U.S. Environmental Protection Agency, Region 9 (W–5–1), 75 Hawthorne Street, San Francisco, CA 94105, 415–744–1906.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 29, 1995 (60 FR 50804), EPA published its final NPDES multi-sector general permit (MSGP) for storm water discharges associated with industrial activity for the following areas: the States of Arizona, Florida, Idaho, Louisiana, Maine, Massachusetts, New Hampshire, New Mexico, Oklahoma and Texas; the District of Columbia; Johnston Atoll, and Midway and Wake Islands; the Commonwealth of Puerto Rico; Federal Indian reservations in Alaska, Arizona, California, Connecticut, Idaho, Louisiana, Maine, Massachusetts, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Rhode Island, Texas, Utah (only the Navajo and Goshute Reservations), Vermont, and Washington; and Federal facilities located in Arizona, the Commonwealth of Puerto Rico, the District of Columbia, Delaware, Idaho, Johnston Atoll, Midway and Wake Islands, Vermont, and Washington. On February 9, 1996 (61 FR 5248), notice was provided of certain deadline extensions and technical corrections to the MSGP, and MSGP coverage was extended to the State of Alaska. Notice of a subsequent technical correction was also provided on February 20, 1996 (61 FR 6412).

The draft MSGP was proposed by EPA on November 19, 1993 (58 FR 61146), and Guam was proposed to be included among the areas of coverage of the MSGP. However, at the time of issuance of the final MSGP for most areas (September 29, 1995), the Guam EPA had not completed its review of the MSGP for certification purposes pursuant to section 401 of the CWA. As such, the MSGP could not be issued for Guam at that time.

On April 8, 1996, the Guam EPA provided its 401 certification for the MSGP, including certain special conditions necessary to ensure compliance with the CWA. Today, EPA is providing notice of the issuance of the final MSGP for Guam including the special conditions required by the Guam EPA.

II. Final MSGP for Guam

The MSGP covers storm water discharges from a wide variety of industrial activities which are described in the fact sheet. The MSGP also includes industry-specific sections that describe the storm water pollution prevention plan requirements, numeric effluent limitations and monitoring requirements for the specific industries. These industry-specific sections are contained in Part XI of the MSGP and are described in Part VIII of the fact sheet. There are also a number of permit requirements that apply to all industries which are found elsewhere in the MSGP and described in the fact sheet.

Today's notice incorporates by reference the permit terms and conditions set forth at 60 FR 51108–51255 published on September 29, 1995, and also incorporates by reference the technical corrections of February 9, 1996 (61 FR 5251–5254) and February 20, 1996 (61 FR 6412). These requirements may be found in Parts I through XI of the permit. The MSGP published on September 29, 1995 on pages 51108–51255 is being revised today to include Guam among the areas for which discharges may be authorized. Today's notice also includes the 401 certification conditions required by the Guam EPA, which are found in Part XII of today's revised MSGP.

A. Contacts

Notices of Intent (NOIs) to be covered under the MSGP and Notices of Termination (NOTs) to terminate coverage under the MSGP must be sent to the Storm Water Notice of Intent Processing Center (see address below). The complete administrative record for the MSGP is available through the Water Docket MC–4101, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

Notice of Intent Address. Notices of Intent to be authorized to discharge under the MSGP should be sent to: NOI/NOT Processing Center (4203), 401 M Street SW., Washington, D.C. 20460.

Address for Other Submittals. Other submittals of information required under the MSGP should be sent to EPA, Region 9, Water Management Division (W–5–3), 75 Hawthorne Street, San Francisco, CA 94105.

NOIs and certain other materials must also be sent to the Guam EPA in accordance with the 401 certification (see below).

B. 401 Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters, shall be granted until the state in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of the CWA. As noted above, the Guam EPA provided its 401 certification on April 8, 1996 for the MSGP. The following special conditions were included:

1. NOIs must be sent to the Guam EPA for review and comment as well as to EPA.

2. Storm water pollution prevention plan (SWPPPs) and supporting best management practices must be submitted to the Guam EPA for review and comment. (Although the Guam EPA did not specify a deadline for submittal, it is presumed that submittal is required as soon as the SWPPP is completed.)

3. All monitoring reports must be submitted concurrently to the Guam EPA to verify discharge compliance with Territorial water quality standards.

These conditions have been included in the final MSGP for Guam.

C. Deadlines

For facilities eligible for coverage under the MSGP of September 29, 1995, EPA's notice of February 9, 1996 (61 FR 5248) extended the deadline for submittal of NOIs to March 29, 1996. In addition, the deadline for SWPPP preparation and compliance was extended until September 25, 1996. However, the following special extended deadlines have been established for facilities in Guam in consideration of the delay in the issuance of the final MSGP for Guam:

NOI Submittal. NOIs must be submitted no later than 90 days after the effective date of the MSGP for Guam (which is the date of publication in the Federal Register).

SWPPP Preparation and Compliance. Preparation and compliance with SWPPPs must be completed no later than 270 days after the effective date of the MSGP for Guam.

These deadlines establish the same time frames for completion of the above actions that were established for facilities by the MSGP issued on September 29, 1995. The expiration date for the MSGP for Guam has been set at October 1, 2000, which is the same expiration date for areas covered of the September 29, 1995 MSGP. Although this results in a permit term slightly less

than the usual five years, alignment of the expiration dates will facilitate permit reissuance.

D. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in the final MSGP for Guam under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements in today's final notice for Guam have already been approved by the Office of Management and Budget in previous submissions made for the NPDES permit program under the provisions of the CWA.

E. Considerations Under Other Federal Laws

For the MSGP issued for Guam by today's notice, EPA is required to conduct and certify certain analyses under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and the Unfunded Federal Mandates Act, Public Law 104–4. By today's action, EPA adopts, incorporates, and certifies the necessary findings under the Regulatory Flexibility Act and the Unfunded Federal Mandates Act made in the September 29, 1995 MSGP for the purposes of the MSGP issued for Guam.

F. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. Under 5 U.S.C. 605(b), no Regulatory Flexibility Analysis is required where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permit will provide any small entity the opportunity to obtain storm water permit coverage as a result of the group application process. Group applications provided small entities a mechanism to reduce their permit application burden by grouping together with other industrial facilities and submitting a common permit application with reduced monitoring requirements and shared costs. The group application information submitted to EPA provided a basis for the development of storm water permit conditions tailored specifically for each industry. The permit requirements have been designed to minimize significant administrative and economic impacts on small entities and should not have a significant impact on industry in general. Moreover, the permit reduces a significant burden on regulated sources of applying for individual permits.

Accordingly, I hereby certify pursuant to 5 U.S.C. 605(b) that this permit will not have a significant impact on a substantial number of small entities.

Dated: September 3, 1996.

Alexis Strauss,

Acting Regional Administrator, Region 9.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq., the ''Act''), except as provided in Part I.B.3 of this storm water multi-sector general permit, operators of point source discharges of storm water associated with industrial activity that discharge into waters of the United States, represented by the industry sectors identified in Part XI. of this permit, are authorized to discharge in the areas of coverage listed below in accordance with the conditions and requirements set forth herein.

Area of Coverage	Permit No.
Guam (non-Federal Facilities)	GUR05*###
Federal Facilities on Guam	GUR05*##F

Operators of storm water discharges from the industrial activities covered under this permit who intend to be authorized by this permit must submit a Notice of Intent (NOI) in accordance with Part II.B of this permit. Operators of storm water discharges associated with industrial activity who fail to submit an NOI in accordance with Part II.B of this permit are not authorized under this general multi-sector permit.

This permit shall become effective on September 24, 1996.

This permit and the authorization to discharge shall expire at midnight, October 1, 2000.

Signed this 3rd day of September, 1996.

Alexis Strauss,

Acting Regional Administrator Region 9.

For reasons set forth in this preamble, Parts I, II, IV and XII of the NPDES Storm Water Multi-Sector General Permit (MSGP) are amended as follows:

I. Inclusion of Guam in MSGP

Part I (Amended)

Part I is amended by revising paragraph A. Permit Area, Region IX to include Guam before the phrase ''Midway and Wake Island'' as follows:

Part I. Coverage Under This Permit

A. Permit Area

* * * * *

Region IX—the State of Arizona, the Territories of Johnston Atoll, Guam, and Midway and Wake Island; * * *

II. NOI Submittal Deadline for Guam

Part II (Amended)

The deadline for NOI submittal for existing facilities in Guam is established by adding Parts II.A.7 and 8 to the MSGP as follows:

Part II. Notification Requirements

A. Deadlines for Notification

* * * * *

7. Existing Facilities in Guam. Except as provided in paragraphs II.A.4 (New Operator), and II.A.5 (Late Notification), individuals on Guam who intend to obtain coverage for an existing storm water discharge associated with industrial activity under this general permit shall submit an NOI in accordance with the requirements of this Part on or before [insert date 90 days after permit publication date].

8. Facilities on Guam Previously Subject to the Baseline General Permit. Eligible facilities previously covered by EPA's 1992 Baseline General Permit for Storm Water Discharges Associated with Industrial Activity (57 FR 44438) may elect to be covered by this permit by submitting an NOI in accordance with the requirements of this Part within [insert date 90 days after permit publication date]. To avoid a lapse in permit coverage should reissuance or termination of the 1992 Baseline General Permit eliminate coverage for certain industries under that permit, NOIs from eligible facilities may also be submitted during the period 90 days prior to the expiration date of the Baseline General Permit.

III. Deadlines for Storm Water Pollution Prevention Plan Preparation and Compliance for Facilities on Guam

Part IV (Amended)

For facilities on Guam, the deadline for storm water pollution prevention plan preparation and compliance is established in the MSGP by adding Parts IV.A.8 and 9 as follows: Part IV. Storm Water Pollution Prevention Plans

A. Deadlines for Plan Preparation and Compliance

* * * * *

8. Existing Facilities on Guam. Except as provided in paragraphs 3, 4, and 5 (above), all existing facilities and new facilities that begin operation on or before [insert date] 270 days after permit publication date shall prepare and implement the plan by [insert date 270 days after permit publication date].

9. Facilities on Guam Switching from the Baseline General Permit to This Permit. Facilities previously subject to the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity (57 FR 44438) that switch to coverage under this permit shall continue to implement the storm water pollution prevention plan required by that permit. The plan shall be revised as necessary to address requirements under Part XI of this permit no later than [insert date 270 days after permit publication date]. The revisions to the plan shall be implemented on or before [insert date 270 days after permit publication date].

IV. 401 Certification Requirements for Guam

Part XII (Amended)

The Guam 401 certification requirements revise the MSGP by adding the following paragraphs after the requirements for Arizona:

Part XII. Coverage Under This Permit

* * * * *

Region IX

* * * * *

Guam (GUR05*###) and Federal Facilities in Guam (GUR05##F)

1. An additional notification requirement is established as follows:

Part II. Notification Requirements

* * * * *

D. Additional Notification

* * * Notices of Intent shall also be submitted to the Guam EPA for review and comment at the following address: Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921.

2. Storm water pollution prevention plans must be submitted for review by the Guam EPA in accordance with the following added language:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

B. Signature and Plan Review

1. Signature/Location. * * * For facilities on Guam, a copy of the plan and supporting best management practices shall be submitted to the Guam EPA at the following address: Guam Environmental Protection Agency, P. O. Box 22439 GMF, Barrigada, Guam 96921. The plan shall be submitted as soon as it is completed.

3. Storm water discharge monitoring reports and all other reports required by the MSGP must be submitted to the Guam EPA in accordance with the following added language:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. Reporting: Where to Submit

* * * * *

2. Additional Notification. * * * For facilities on Guam, copies of all discharge monitoring reports and other reports required under this permit shall also be sent to the Guam EPA at the following address: Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921.

[FR Doc. 96–24285 Filed 9–23–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

September 18, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce the paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed FCC 398, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

For additional information or copies of the proposed FCC 398 contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov. Copies of the form can also be obtained via fax on demand and via internet. To retrieve the form via fax call 202–418–0177 (from the handset of a fax machine) and enter the document retrieval number 000398 when prompted by the system. To retrieve the form via internet download postcript file from the FCC internet site http://www.fcc.gov/formpage.html. Copy the file to a postscript printer to print.

Persons wishing to comment should direct comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov. All comments should be received by November 23, 1996, for this collection.

Type of Review: New Collection

Title: Children's Television Programming Report

OMB Number: None

Form Number: FCC 398

Affected Public: Business or other for-profit

Number of Respondents: 1,200 Commercial TV Licensees

Estimated time per response: 3.5–4.5 hours

Total annual burden: 18,000

Needs and Uses: On 08/08/96, the Commission adopted a Report and Order in MM Docket No. 93–48 Policies and Rules Concerning Children's Television Programming. As a result of this Report and Order, the Commission has developed a new FCC Form 398, Children's Television Programming Report. The FCC 398 will request information to identify the children's educational and informational programs aired to meet their obligation under the Children's Television Act of 1990 (''CTA''). The form will also request information on children's educational and informational programs that stations plan to air in the next calendar quarter. This standardized form will facilitate consistency of reporting among all licensees, assist in efforts by the public and the Commission to monitor station compliance with the CTA, and lessen the burden on the public and Commission staff.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–24407 Filed 9–20–96; 8:45 am]

BILLING CODE 6712–01–P

[DA 96–1205]

Streamlining the International Section 214 Authorization Process and Tariff Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On July 29, 1996, the International Bureau of the Federal Communications Commission released an order adopting an exclusion list. The exclusion list identifies restrictions on providing service using particular facilities or to particular countries for those carriers receiving a global international Section 214 authorization. With this action, carriers will be able to

determine which non-U.S. licensed facilities they will be able to use under the grant of a global Section 214 authorization.

EFFECTIVE DATE: July 26, 1996.

FOR FURTHER INFORMATION CONTACT: James Hedlund, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1399.

SUPPLEMENTARY INFORMATION: This is a summary of the International Bureau's Order adopted on July 26, 1996 and released on July 29, 1996 (DA 96–1205). The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (202) 857–3800.

Summary of Order

1. On February 29, 1996, the Federal Communications Commission adopted rules to streamline the international Section 214 authorization process and tariff requirements. (Report and Order, Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118, FCC 96–79, released March 13, 1996, 61 FR 15724 (April 9, 1996)). The Report and Order adopted procedures for issuing global, rather than country-specific and facility-specific, Section 214 authorizations to qualified applicants. As part of the new procedures, the International Bureau was required to establish and maintain an exclusion list identifying restrictions on providing service using particular facilities or to particular countries for those carriers receiving a global Section 214 authorization.

2. On June 20, 1996, the International Bureau released a Public Notice seeking comment on a draft exclusion list for global Section 214 authorizations. Several parties raised concerns that including CANUS–1 on the exclusion list may place the cable system at a competitive disadvantage and impose undue costs on carriers and the Commission. The Bureau stated, however, that removal of the cable from the exclusion list may be inconsistent with certain conditions of the U.S. Department of State's support for grant of the CANUS–1 cable landing license. In addition, the Bureau did not agree with MFSI's position that the exclusion list is confusing because it lists carriers and facilities that are excluded as well as non-U.S. licensed facilities that U.S. carriers with global authority are permitted to use. Given that MFSI notified the Commission of new non-U.S. licensed cable systems that were not listed as ''permissible'' foreign-licensed facilities, the Bureau modified the proposed exclusion list to permit use of these new facilities by carriers with global authority.

Ordering Clauses

3. Accordingly, it is ordered that the Exclusion List attached to this order, which identifies restrictions on providing service using particular facilities or to particular countries for those carriers receiving a global Section 214 authorization, is hereby adopted.

4. This order is issued under 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of the public notice of this Order (see 47 CFR 1.4(b)(2)).

Federal Communications Commission.

Diane J. Cornell,

Chief, Telecommunications Division, International Bureau.

Attachment—International Section 214 Authorizations

Exclusion List as of July 26, 1996

The following is a list of countries and facilities not covered by grant of global Section 214 authority under § 63.18(e)(1) of the Commission's Rules. 47 CFR 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under § 63.01 of the Commission's Rules, unless the carrier's Section 214 authorization specifically lists the facility. Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to § 63.18(e)(6) of the Commission's Rules.

Countries

Cuba (applications for service to this country shall comply with the separate filing requirements of the Commission's Public Notice Report No. I–6831, dated July 27, 1993, ''FCC to Accept Applications for Service to Cuba.'')

Facilities

CANUS–1 Cable System

All non-U.S. licensed Cable and Satellite Systems Except:

Foreign Cable Systems

Aden-Djibouti
APC
APCN
APHRODITE 2
ARIANNE 2
ASEAN
B–M–P
Brunei-Singapore
CADMOS
CANTAT–3
CARAC
CELTIC
China-Japan
CIOS
Denmark-Russia 1
ECFS
EMOS–1
EURAFRICA
Germany-Denmark 1
Germany-Sweden No. 4
Germany-Sweden No. 5
H–J–K
HONTAI–2
ITUR
KATTEGAT–1
Kuantan-Kota Kinabalu
LATVIA-SWEDEN
Malaysia-Thailand
Marseille/Palermo Link
MAT–2
ODIN
PENCAN–5
R–J–K
RIOJA
SAT–2
SEA–ME–WE 2
SEA–ME–WE 3
T–V–H
TAGIDE 2
TASMAN 2
UGARIT
UK–BEL 6
UK-Denmark 4
UK-Germany 5
UK-Netherlands 12
UK-Netherlands 14
UK-Spain 4
UNISUR

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission will then release an order amending the exclusion list. This list also is subject to change upon issuance of an Executive Order. See Streamlining the Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118 FCC 96–79, released March 13, 1996.

For additional information, contact the International Bureau's Telecommunications Division, Policy & Facilities Branch, (202) 418–1460.

[FR Doc. 96–24065 Filed 9–23–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License, Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

D.L. International Forwarders Inc., 8550 West Flagler Street, Suite 111, Miami, FL 33144. Officers: Diane L. Leyva, President; Enrique Bassas, Corp. Secretary

Rodriguez Company, 2502 W. Brooklyn, Dallas, TX 75211, Leticia Rodriguez, Sole Proprietor

Sea Inland Air International Inc., 7997 N.W. 21 Street, Miami, FL 33126. Officer: Henry Zaldivar, President.

Dated: September 18, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–24386 Filed 9–23–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Commercial Capital Corporation, DeKalb, Mississippi; to acquire Kemper Finance, Inc., DeKalb, Mississippi, and thereby engage in consumer finance activities, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y. These activities will be conducted throughout the State of Mississippi.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bank of Montreal, Montreal, Canada, and Bankmont Financial Corp., New York, New York; to engage *de novo* through BMO Leasing (US), Inc., Chicago, Illinois, in leasing activities, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, The Mortgage Center, Springfield, Massachusetts, in residential mortgage lending pursuant to § 225.25(b)(1) of the Board's Regulation Y. The Mortgage Center will be a joint venture, between Norwest Ventures, Inc., and Landry, Lyons, and Whyte Company, Inc., both of Springfield, Massachusetts.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Maedgen & White, LTD., Lubbock, Texas; to engage *de novo* through its subsidiary, Plains Service Corporation, Lubbock, Texas, in data processing pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 18, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–24409 Filed 9–23–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be

received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Union-Calhoun Investments, Ltd., Rockwell City, Iowa; to acquire Wetter Income Tax Service, Rockwell City, Iowa, and thereby engage in the nonbanking activity of tax preparation and planning, pursuant to § 225.25(b)(21) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 16, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–24363 Filed 9-23-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capitol Bancorp, Limited, Lansing, Michigan; to acquire 51 percent of the voting shares of Brighton Commerce Bank, Brighton, Michigan.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Chambers Bancshares, Inc., Danville, Arkansas; to acquire 21.8 percent of the voting shares of Bank of Rogers, Rogers, Arkansas.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Bluestem Bank Holding Company, Sioux Falls, South Dakota; to become a bank holding company by acquiring 23.05 percent of the voting shares of Thomson Holding, Inc., Centerville, South Dakota, and thereby indirectly acquire First Midwest Bank, Centerville, South Dakota.

2. Dent Bancshares, Inc., Dent, Minnesota; to become a bank holding company by acquiring 98.11 percent of the voting shares of Farmers State Bank of Dent, Dent, Minnesota.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Dublin Bancshares, Inc., Dublin, Texas; to merge with Gustine-DeLeon Bancshares, Inc., DeLeon, Texas, and thereby indirectly acquire First State Bank, DeLeon, Texas.

Board of Governors of the Federal Reserve System, September 18, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–24408 Filed 9–23–96; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, September 30, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 9, 1996.)
2. Proposals relating to Federal Reserve System benefits.
3. Proposed acquisition of check reader/sorter equipment within the Federal Reserve System.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 20, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24648 Filed 9–20–96; 3:26 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Intent To Prepare an Environmental Impact Statement (EIS) for the Lease Construction and Consolidation of the Immigration and Naturalization Service (INS) Miami, Dade County, FL

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4B, GSA announces its intent to prepare an EIS for the lease construction and consolidation the INS in Miami.

The EIS will examine the short and long term impacts on the natural and built environments of developing and operating a consolidated INS facility at 9300–9499 NW 41st Street, Miami, FL 33172. Potential impact assessment will

include but not limited to public facilities & infrastructure, parking, traffic, and community & economic issues.

The EIS will also examine measures to mitigate unavoidable adverse impacts of the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation requirements under Section 106 of the National Historic Preservation Act to identify potential impacts to existing historic or cultural resources.

The proposed action is to lease a newly constructed building for the INS consolidation on the vacant parcel of land consisting of approximately 7.31 acres at 9300–9499 NW 41st Street, Miami, FL 33172. The proposed facility will consist of an office building containing a total area of approximately 214,600 occupiable square feet (osf), along with supporting site improvements and 868 parking spaces. The subject site fronts for 390 feet along NW 41st Street and spans most of the area back to Dressels Canal (approximately 1150 feet south from 41st Street at the deepest point). The proposed facility would accommodate the INS by consolidating the District Office, the Asylum Office, and the Executive Office of Immigration Review (EOIR). The Krome Detention Center is a high-security containment facility located in Western Dade county and its location, function, and purpose will be unchanged as a result of the proposed action.

GSA has identified and screened from consideration, over 20 alternatives to the proposed action since 1993. GSA has identified the following alternatives to be examined in the EIS:

- ''No Action,'' that is, take no action and continue to house the INS at its current locations.
- Lease construction of a consolidated facility of 214,600 osf at the proposed site at 9300–9499 NW 41st Street, Miami, Florida 33172. This is the GSA preferred alternative.

As part of the public scoping process, GSA solicits your comments in writing at the following address: Mr. Phil Youngberg, Regional Environmental Officer (4PT), General Services Administration (GSA), 401 West Peachtree Street, NW, Suite 3010, Atlanta, GA 30365, or FAX: Mr. Phil Youngberg at 404–331–4540. Comments should be received no later than October 21, 1996. All comments must be in writing.

GSA intends to conduct a Public Scoping Meeting to solicit comments, and to address general questions concerning the proposed action and NEPA. GSA will place a Public Notice of this and all subsequent public meetings and in the Miami Herald approximately two weeks prior to the event. GSA will also notify persons and organizations by direct mail.

Dated: September 16, 1996.

Phil Youngberg,

Regional Environmental Officer (4PT).

[FR Doc. 96–24443 Filed 9–23–96; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–27]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. An Assessment of Violence Prevention Technical Assistance Efforts for State and Local Health Departments—New—This project is assessing the needs of state and local health departments for technical assistance from the Centers for Disease Control and Prevention in violence prevention. The assessment will determine what the health departments are currently doing in violence prevention; identify violence prevention efforts for which they currently lack resources or technical expertise; identify technical assistance they have already received from CDC; determine what technical assistance in violence prevention they wish from CDC and in what priority they place these needs; and recommend to CDC how to modify and use the needs assessment developed in this project for future assessments.

The assessment is focusing on violence committed by youth and violence against women and partners, children and the elderly, but also includes other areas of violence prevention in which the state and local health departments are interested. The study includes the 50 state health departments and a sample of the health departments of the largest cities or metropolitan areas in the United States.

Data will be collected primarily by telephone interviews, preceded by mailed requests for data and written materials, along with a list of topics to be covered in the interviews. Analyses will address variation in the needs, resources, and priorities for technical assistance in violence prevention by region, size of place or state, demographic makeup of the population served, age of extant violence prevention efforts and other characteristics of the programs. Recommendations will be made regarding ways in which CDC can most effectively provide technical assistance in violence prevention to different types of state and local health departments, especially in view of the priorities set by the health departments. There are no cost to the respondents.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
State Health Departments	50	1	1	50
Total				50

Dated: September 17, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–24402 Filed 9–23–96; 8:45 am]

BILLING CODE 4163–18–P

[30DAY–20]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on September 18, 1996.

Proposed Projects

1. Tuberculosis in Children—New—The Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of Tuberculosis Elimination, Surveillance Epidemiologic Investigations Branch will be conducting a study for the purpose of performing research concerning the epidemiology of TB in children, including children co-infected with the human immunodeficiency virus (HIV). The study will involve the following modules: (1) the epidemiology, magnitude and risk factors for TB in children, including HIV-infected children; (2) studies of the diagnosis of TB in children, and (3) reducing the risk of nosocomial transmission of TB in pediatric settings. The total cost to respondents and government is estimated at $138,000.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
Positive Tuberculin Skin Testing Form	100	1	0.33
Negative Tuberculin Skin Testing Form	200	1	0.33

The total annual burden is 99.

2. A Brief Intervention for Alcohol Problems in an Emergency Department—New—The contribution of alcohol to injuries due to motor vehicle crashes, violence, and other causes has been a public health concern for many years. Because the emergency department (ED) is the primary source of treatment for many individuals with alcohol-related injuries, the ED visit provides a unique opportunity for early recognition and initial clinical management of a major injury risk factor, excessive alcohol consumption. The field of alcohol treatment is evolving rapidly and therapeutic attention is increasingly directed toward persons with mild or moderate drinking problems who do not require specialized treatment. Controlled studies in outpatient primary care settings have demonstrated that interventions consisting of as little as a single brief interview and feedback session can decrease alcohol consumption in 40% to 47% of excessive drinkers at 6 months followup. The purpose of this study is to design, implement, and evaluate the effectiveness of an ED-based prevention program for injured patients with alcohol probems that incorporates promising new screening methods and a brief intervention.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
Recruitment/Pre-screen	1,700	1	0.05
Screen	1,105	1	0.083
Co-morbidity Information	354	1	0.067
Readiness to Change	354	1	0.050
Short Inventory of Problems	354	1	0.067
Baseline Drinking Behavior	354	1	0.10
Baseline Drug Behavior	354	1	0.050
Followup Information	354	1	0.083
Intervention*	301	1	0.167
Followup	196	1	0.333.

The total annual burden is 440.1.

Dated: September 17, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–24401 Filed 9–23–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Administration on Children, Youth and Families; Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KB, The Administration on Children, Youth and Families (ACYF) (60 FR 56959), as last amended, November 6, 1995. This Notice reflects the new organizational structure for the Family and Youth Services Bureau established within the ACYF.

Amend Chapter KB as follows:

a. KB.10 Organization. Delete in its entirety and replace with the following:

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner, who reports directly to the Assistant

Secretary for Children and Families, and consists of:

Office of the Commissioner (KBA)
Division of Program Evaluation (KBB)
Head Start Bureau (KBC)
Program Operations Division (KBC1)
Program Support Division (KBC2)
Children's Bureau (KBD)
Policy Division (KBD1)
Program Operations Division (KBD3)
Family and Youth Services Bureau (KBE)
National Center on Child Abuse and Neglect (KBF)
Program Policy and Planning Division (KBF1)
Clearinghouse Division (KBF2)
Child Care Bureau (KBG)
Program Operations Division (KBG1)
Policy Division (KBG2)

b. Delete paragraph E in its entirety and replace with the following:

E. The Family and Youth Services Bureau recommends policy direction and programs to address youth and family issues to the Commissioner. It assesses policies, legislation and programs which affect youth and families; recommends budgetary and legislative proposals and subject areas for research and demonstration activities; coordinates efforts with and provides expert advice to departmental and other federal agencies on youth issues and programs and develops program initiatives to address the needs of youth and families. The Bureau represents HHS on various councils, workgroups and committees and provides leadership and coordination to other HHS programs and agencies.

The Bureau promotes a youth development approach to program services so that Bureau programs and activities are planned and designed with an emphasis on meeting the developmental needs of young people and their families, including runaway and homeless youth, youth at risk of involvement with gangs, violence and drugs and other youth in at-risk situations. Administration of these programs currently includes development and implementation of policy, guidelines and regulations concerning the funding and management of service projects for youth under the Runaway and Homeless Youth Act of 1974, the Anti-Drug Abuse Act of 1988 and the Crime Control Act of 1994.

The Bureau oversees the receipt, review and award of applications for grants that ultimately provide services to youth and families and monitors the management of these grants, either directly or in liaison with ACF Regional Offices. In addition, the Bureau designs, develops, funds and monitors support activities related to these programs including, but not limited to, the provision of technical assistance, a monitoring system, a data collection system, a family and youth clearinghouse and a national communications system/hotline.

The Bureau determines the conceptual and policy framework to address issues facing families and adolescents. It identifies problems, defines critical issues for investigation and makes recommendations regarding subject areas for research, demonstration and evaluation activities. Based on the outcomes of these activities, the Bureau disseminates information through conferences, forums and written materials; provides assistance to service providers and state and local governments in planning, developing, implementing and evaluating programs affecting family and youth; and recommends plans and programs to increase public awareness and understanding about activities affecting vulnerable families and youth.

Dated: September 17, 1996.

Mary Jo Bane.

Assistant Secretary for Children and Families.

[FR Doc. 96–24387 Filed 9–23–96; 8:45 am]

BILLING CODE 4184–01–P

Regional Offices; Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KD, The Regional Offices of the Administration for Children and Families (61 FR 18147), as last amended, April 24, 1996. This reorganization realigns the functions in Region 1 to support their streamlining plan.

I. Amend Notice 60 FR 27315, dated May 23, 1995: The first sentence of the first paragraph should read as follows: ''This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KD, The Regional Offices of the Administration for Children and Families (58 FR 44343), as last amended, May 1, 1996.''

II. Chapter KD is amended as follows:

a. Delete KD.10 Organization in its entirety and replace with the following:

Office of the Regional Administrator (KD3A, KD8A, KDXA)
Office of the Regional Hub Director (KD4A and KD9A)
Office of Financial Operations (KD3B, KD4B, KD8B, KD9B and KDXB)
Office of Family Security (KD3C, KD4C, KD8C, KD9C and KDXC)
Office of Family Supportive Services (KD3D, KD4D, KD8D, KD9D and KDXD)

b. Delete KD.20 Functions, Paragraph A in its entirety and replace with the following:

KD.20 Functions (For Regions 3, 8 and X) A. The Office of the Regional Administrator is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families. In addition, the Office of the Regional Administrator has a Deputy Regional Administrator who reports to the Regional Administrator. The Office provides executive leadership and direction to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective and 2 efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The Office takes action to approve state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF operations, the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. It represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Administrator, an administrative staff assists the Regional Administrator and Deputy Regional Administrator in providing day-to-day support for regional administrative functions, including budget, internal systems, employee relations, and human resource development activities. The Staff develops and implements the regional planning process. It tracks, monitors

and reports on regional progress in the attainment of ACF national goals and objectives. The Staff coordinates public awareness activities, information dissemination and education campaigns in accordance with the ACF Office of Public Affairs and in conjunction with the HHS Regional Director. It assists the Regional Administrator in management of cross-cutting initiatives and activities among the regional components, and ensures effective and efficient management of internal automation processes.

c. After the end of KD.20 Functions, Paragraph D and before KD2.10 Organization, insert the following: KD1.10 Organization. Region 1—Goal-Driven Structure is organized as follows:

Office of the Regional Administrator (KD1A)

Goal#1–Family Self Sufficiency
Goal#2–Healthy and Safe Children, Families and Communities
Goal#3–Developmental Disabilities
Goal#4–Reinvention of ACF as a Results-Oriented, Customer-Driven Organization
Goal#5–Financial Management

KD1.20 Functions. The Administration for Children and Families, Region 1, is headed by a Regional Administrator, and a Deputy Regional Administrator who reports to the Regional Administrator. The Office provides executive leadership to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective, efficient, results-oriented program and financial management. ACF's primary goal is to assist vulnerable and dependent children and families to achieve economic independence, stability and self-reliance. The Office is responsible for providing centralized management and technical administration of ACF formula, block, entitlement and discretionary grant programs which are designed to assist families achieve economic independence and self-sufficiency, and to ensure that children have safe, healthy and permanent environments in which to grow. It oversees ACF operations, the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out.

In order to ensure that agency goals are accomplished, the Office of the Regional Administrator provides leadership to grantees through a staff organized around and focused on ACF goals and priorities. ACF programs and functions are grouped within offices according to current ACF goals and priorities. Each office reports to a goal leader charged with achieving measurable progress towards ACF goals and priorities, through their work with state and local grantees, the public, other federal agencies and internally within the Department. The Regional goal structure is designed to allow ACF to respond quickly in a dynamic and changing environment to emphasize, focus on and achieve ACF and HHS goals and priorities.

The Office takes action to approve state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives on all ACF programs.

The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing ACF programs. The Office provides technical assistance to entities responsible for administering ACF programs to resolve identified problems, ensures that appropriate procedures and practices are adopted, works with appropriate state and local officials to develop and implement outcome-based performance measures and monitors the programs to ensure their efficiency and effectiveness. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office also reviews cost estimates and reports for ACF grant programs and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve or disallow costs under ACF grant programs and to approve, defer or disallow claims for federal financial participation in ACF formula and entitlement grant programs. As applicable, recommendations are made on the clearance and closure of audits of state and local grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office issues certain grant awards based on a review of project objectives, budget projections, and proposed funding levels. The Office establishes regional financial management priorities and reviews cost allocation plans, and oversees the management and coordination of office automation systems in the region and monitors state systems projects for ACF programs.

The Office provides leadership in moving ACF regional office toward results-oriented, customer-focused partnerships with administrators of ACF programs. The Office is also responsible for providing administration and management support for the Regional Office. The Office is responsible for day-to-day operational management of regional administrative functions, including budget, performance management, procurement, property management, internal systems, employee relations, human resource development activities and communications.

The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. The Office represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Dated: September 17, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 96–24388 Filed 9–23–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96N–0283]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by October 24, 1996.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Part 1210 Regulations Under the Federal Import Milk Act (21 CFR Part 1210) (OMB Control Number 0910–0212—Extension)

Under the regulations implementing the Federal Import Milk Act (21 U.S.C. 141–149), milk or cream may be imported into the United States only by the holder of a valid import milk permit. Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the dairy farm and each plant in which the milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50 °F. In addition, the regulations require that dairy farmers and plants maintain pasteurization records (§ 1210.15) and that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and address (§ 1210.22).

FDA estimates the burden of complying with the information collection provisions of these regulations as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 1815/Permits granted on certificates	1210.23	1	1	1	0.5	0.5
FDA 1993/Application for permit	1210.20	1	1	1	0.5	0.5
FDA 1994/Tuberculin test	1210.13	0	0	0	N/A	0
FDA 1995/Physical examination of cows	1210.12	0	0	0	N/A	0
FDA 1996/Sanitary inspection of dairy farms	1210.11	1	300	300	1.5	450
FDA 1997/Sanitary inspections of plants	1210.14	1	1	1	2.0	2.0
Totals						453

There are no capital or operating and maintenance costs associated with this collection.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
21 CFR 1210.15	1	1	1	.05	0.05

There are no capital or operating and maintenance costs associated with this collection.

No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by FDA (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product, shipper's name and address). Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. No burden has been estimated for Forms FD 1994 and 1995 because they are not currently being used. The Secretary of Health and Human Services has the discretion to allow Form FD 1815, a duly certified statement signed by an accredited official of a foreign government, to be submitted in lieu of Forms FD 1994 and 1995. To date, Form FD–1815 has been submitted in lieu of these forms.

Dated: September 10, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–24365 Filed 9–23–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current

information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Joint Meeting of the Nonprescription Drug Advisory Committee and the Arthritis Drugs Advisory Committee

Date, time, and place. October 9, 1996, 8:30 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I, II, and III, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Kennerly K. Chapman or Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or e–mail ChapmanK@fda.cder.gov, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541, or Arthritis Advisory Committee, code 12532. Please call the hotline for information concerning any possible changes.

General function of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (OTC) (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Arthritis Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 2, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will discuss new drug application (NDA) 20–373, S+ Ibuprofen (dexibuprofen, Sterling Winthrop/Bayer) 200-milligram caplet, indicated for the temporary relief of minor aches and pains associated with the common cold, headache, toothache, muscular aches, back ache, menstrual cramps, minor pain of arthritis, and for the temporary reduction of fever for OTC status.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. October 9, 1996, 9:30 a.m., Holiday Inn—Gaithersburg, Walker Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 5 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Pulmonary-Allergy Drugs Advisory Committee, code 12545. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss Genentech's clinical labeling supplement to modify the current prescribing information for Pulmozyme® (dornase alfa) pertaining to cystic fibrosis patients with forced vital capacity of the lung, less than 40 percent of predicted capacity.

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. October 10 and 11, 1996, 8:30 a.m., Holiday Inn—Bethesda, Versailles Ballrooms II and III, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 10, 1996, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open public hearing, October 11, 1996, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Kennerly K. Chapman or Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541, Pulmonary-Allergy Drugs Advisory Committee, code 12545. Please call the hotline for information concerning any possible changes.

General function of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of OTC (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Pulmonary-Allergy Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 10, 1996, the committees will

jointly consider NDA 20–463, Nasalcrom® (Cromolyn Sodium Nasal Solution, United States Pharmacopeia) for OTC treatment of seasonal allergic rhinitis sponsored by McNeil Consumer Products Co. On October 11, 1996, the committees will jointly consider the prescription to OTC switch of NDA 19–589, Vancenase AQ® Nasal Spray (Beclomethasone Dipropionate) for the treatment of seasonal allergic rhinitis sponsored by Schering-Plough Pharmaceutical Co.

National Mammography Quality Assurance Advisory Committee

Date, time, and place. October 21 and 22, 1996, 9 a.m., and October 23, 1996, 8 a.m., Sheraton Reston Hotel, meeting rooms 1 and 2, 11810 Sunrise Valley Dr., Reston, VA. A limited number of overnight accommodations have been reserved at the Sheraton Reston Hotel. Attendees requiring overnight accommodations may contact the hotel at 703–620–9000 and reference the FDA committee meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, October 21, 1996, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, October 22, 1996, 9 a.m. to 5 p.m.; open committee discussion, October 23, 1996, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Mammography Quality Assurance Advisory Committee, code 12397. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee advises on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 7, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 21 and 22, 1996, the committee will discuss regulation of interventional mammography under the Mammography Quality Standards Act (MQSA) of 1992. On October 23, 1996, the committee will discuss: (1) The request of the American Board of Certification in Radiology to be designated as eligible to certify interpreting physicians under the MQSA and (2) controversial areas of the proposed final regulations (see 61 FR 14856, April 3, 1996 (21 CFR part 900)). Copies of the proposed final regulations may be requested in writing from MQSA, c/o KRA Corp., 1010 Wayne Ave., suite 850, Silver Spring, MD, 20910, or FAX 301–495–9410.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 18, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–24453 Filed 9–23–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Fogarty International Center Advisory Board Meeting

Pursuant to Public Law 92–463, as amended, notice is hereby given of the thirty-fourth meeting of the Fogarty International Center (FIC) Advisory Board, October 8, 1996, in the Lawton Chiles International House (Building 16) at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 12:00 p.m.

The agenda will begin with a report by the Director, FIC. The meeting will focus on emerging infectious diseases and will include the following presentations: the Presidential Decision Directive on Emerging Infectious Diseases; National Institute of Allergy and Infectious Diseases/FIC collaboration in emerging infectious diseases; a follow-up on the International Colloquium on Ebola Virus; and an update on the status of the International Conference on Malaria planned for January 1997. There also will be a report on the June Meeting of the Advisory Committee to the Director, NIH and the Meeting of Representatives of NIH Advisory Councils.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, as amended, the meeting will be closed to the public from 1:00 p.m. to adjournment for the review of applications for awards under the Senior International Fellowship Program, the Minority International Research Training Program and the International Program in Environmental and Occupational Health; the Fogarty International Research Collaboration Awards and HIV, AIDS and Related Illnesses Collaboration Awards; and Nominations for the Scholars-in-Residence Program.

Paula Cohen, Committee Management Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 CENTER DR MSC 2220, Bethesda, Maryland 20892–2220, telephone: 301–496–1491, will provide a summary of the meeting and a roster of the committee members upon request.

Irene Edwards, Executive Secretary, Fogarty International Center Advisory Board, Building 31, Room B2C08, telephone: 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cohen at least 2 weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Awards Program)

Dated: September 17, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24439 Filed 9–23–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: October 24, 1996.

Time: 8:30 a.m..

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Marcel Pons, Scientific Review Administrator, 6701 Rockledge Drive, Room 4196, Bethesda, Maryland 20892, (301) 435–1217.

Name of SEP: Biological and Physiological Sciences.

Date: October 30, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 6166, Telephone Conference.

Contact Person: Dr. Abubakar A. Shaikh, Scientific Review Administrator, 6701 Rockledge Drive, Room 6166, Bethesda,Maryland 20892, (301) 435–1042.

Name of SEP: Chemistry and Related Sciences.

Date: November 6, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5156, Telephone Conference.

Contact Person: Dr. Chhandra Ganguly, Scientific Review Administrator, 6701 Rockledge Drive, Room 5156, Bethesda, Maryland 20892, (301) 435–1739.

Name of SEP: Chemistry and Related Sciences.

Date: November 12, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5156, Telephone Conference.

Contact Person: Dr. Chhandra Ganguly, Scientific Review Administrator, 6701 Rockledge Drive, Room 5156, Bethesda, Maryland 20892, (301) 435–1739.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93. 396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 17, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24438 Filed 9–23–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4086–N–50]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due by November 25, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development 451—7th Street, SW., Room 9116, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Telephone number (202) 708–3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Owner's Certification and Application for Housing Assistance Payments, Schedule of Section 8 Special Claims, Schedule of Tenant Assistance Payments Due and Special Claims Worksheets.

OMB Control Number: 2502–0182.

Description of the need for the information and proposed use: ''Special claims for housing assistance payments'' These forms are used by owners to request monthly housing assistance payments for eligible households, to request unpaid rent and damages not received from vacating tenants, request funds for vacancy loss, limit the number of households who have income above 50% median income and restrict admission of ineligible tenants.

Agency form numbers: HUD 52670, 52670A, 52671A–D.

Members of affected public: Businesses or other For-Profit.

Status of the proposed information collection: Extension without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 17, 1996.

James E. Schoenberger,

Associate General Deputy, A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–24431 Filed 9–23–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4086–N–48]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due by November 25, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451-7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Telephone number (202) 708–3944 (this not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 34, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Physical Inspection Report.

OMB Control Number: 2502–0369.

Description of the need for the information and proposed use: The HUD mortgage insurance program requires mortgagees to annually inspect each insured project and give HUD and the project owner a report on that inspection. This format enforces standards that all mortgagees must comply with when conducting annual inspections.

Agency form numbers: HUD 9822.

Members of affected public: Businesses or other For-Profit, & Non-Profit Institutions.

Status of the proposed information collection: Extension without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 17, 1996.

James E. Schoenberger,

Associate General Deputy, A/S Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–24432 Filed 9–23–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3569–N–02]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 25, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, extension 4128 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for

review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) Development Cost Budget/Cost Statement, Actual Development Cost Certificate, Acquisition and Relocation Report.

OMB Control Number: 2577–0036.

Description of the need for the information and proposed use: HUD needs the information on the Cost Budget/Statement to determine whether PHA expenditures or requests for funds are reasonable in relation to the stage of development so that, if they are not, appropriate action can be taken to prevent budget overruns or excessive financing. PHAs submit the Actual Development Cost Certificate to notify HUD that all development work has been completed, and report the amount for all costs relating to development. Acquisition and relocation reports enable HUD to determine PHA compliance with acquisition and relocation requirements pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Agency form numbers, if applicable: HUD–52427, HUD–52484.

Members of affected public: State or Local Governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 824 respondents, annually, semi-annually, and quarterly, 5 average hours per response, 11,667 hours for a total reporting burden.

Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 17, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Development Cost Budget/ Cost Statement

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0036 (Exp. 5/31/96)

Dwelling Units			Copy Number:	PR/Project Number:
Family	Elderly	Total		
			Public Housing Agency:	Locality of Project:

No financial or technical assistance may be provided to a project pursuant to an Annual Contributions Contract unless a PHA Proposal, including a development cost budget, has been approved (24 CFR 941).

Housing Type and Production Method	Turnkey	Conv.	Force Acct.
New Construction			
ACQ W/Subst. Rehab.			
ACQ WO/Subst. Rehab.			

Status (Check one)

- ☐ PHA Proposal (PP) Budget
- ☐ Budget Between PP and Contract Award
- ☐ Contract of Sale/Contract Award Budget
- ☐ Budget Between Contract Award & Final
- ☐ Final Development Cost Budget
- ☐ Development Cost Control Statement
- ☐ Statement of Actual Development Cost

Subpart I - Budget

Line No.	Account Classification (a)	Latest Approved Budget Date _____ (b)	Actual Development Cost Incurred To _____ (c)	Actual Contract Award Balance (d)	Estimated Additional to Complete (e)	Amount (c) + (d) + (e) (f)	Per Unit (g)
Developer's Price							
1	1440 Site						
2	1450 Site Improvements						
3	1460 Dwelling Construction						
4	1465 Dwelling Equipment						
5	1470 Nondwelling Construction						
6	1475 Nondwelling Equipment						
7	1430.1 Archit. & Engr. Svcs.						
8	Other						
9	**Total Developer's Price**						
Public Housing Agency Costs							
	Operations						
10	1406 Operations						
	Administration						
11	1410.1 Nontechnical Salaries						
12	1410.2 Technical Salaries						
13	1410.4 Legal Expenses						
14	1410.9 Employee Benefit Contribution						
15	1410.10 Travel						
16	1410.18 Equipment Expended						
17	1410.19 Sundry						
18	**Total Administration**						
	Liquidated Damages						
19	1415 Liquidated Damages						
	Interest						
20	1420.1 Interest to HUD						
21	1420.2 Interest on Notes—Non-HUD						
22	1420.7 Interest Earned from Invest.						
23	**Total Interest**						
	Initial Operating Deficit						
24	1425 Initial Operating Deficit						
	Planning						
25	1430.1 Architectural & Engr. Fees						
26	1430.2 Consultant Fees						
27	1430.6 Permit Fees						
28	1430.7 Inspection Costs						
29	1430.9 Housing Surveys						
30	1430.19 Sundry Planning Costs						
31	**Total Planning**						

form **HUD-52484** (8/22/96)
ref Handbook 7417.1

Copy Number:	PR/Project Number:

Subpart I - Budget (continued)

Line No.	Account Classification (a)	Latest Approved Budget Date _____ (b)	Actual Development Cost Incurred To _____ (c)	Actual Contract Award Balance (d)	Estimated Additional to Complete (e)	Amount (c) + (d) + (e) (f)	Per Unit (g)
Site Acquisition							
32	1440.1 Property Purchases						
33	1440.2 Condemnation Deposits						
34	1440.3 Excess Property						
35	1440.4 Surveys and Maps						
36	1440.5 Appraisals						
37	1440.6 Title Information						
38	1440.8 Legal Costs – Site						
39	1440.10 Option Negotiations						
40	1440.12 Current Tax Settlement						
41	1440.19 Sundry Site Costs						
42	1440.20 Site Net Income						
43	**Total Site Acquisition**						
44	1450 **Site Improvements**						
45	1460 **Dwelling Construction**						
46	1465 **Dwelling Equipment**						
47	1470 **Nondwelling Construction**						
48	1475 **Nondwelling Equipment**						
49	1480 **Contract Work in Progress**						
50	1485 **Demolition**						
51	1495 **Relocation Costs**						
52	1499 **Development Used for Modernization**						
53	**Total** (Including Donations)						
54	Less Donations						
55	**Total Before Contingency** (excluding Donations)						
56	Contingency: 1% to 5% (or less) of line 55						
57	**Total Development Cost**						

Subpart II - Detail of Other in Developer's Price

1. Developer's Fee and Overhead $_____
2. Interim Financing _____
3. Closing Costs _____
4. Property Taxes and Assessments _____
5. State or Local Sales, Excise or Other Taxes _____

Total Other $_____

Subpart III - Supporting Data for Cost Estimates

For the PP Budget, attach an itemized breakdown of the costs chargeable to each of the following accounts. For subsequent budgets, provide this information only for accounts that are being changed.

1410.1 and 1410.2: List, by job title, each PHA employee whose salary, or portions thereof, will be chargeable to these accounts. For each, show the annual rate of gross salary, the estimated length of time to be spent in connection with development of this project, and the total gross salary which is properly chargeable to either of these accounts. If only a portion of the employee's time will be chargeable to this project, show the percentage that will be so chargeable; and show, in a footnote, the percentage distribution to other projects and the accounts to which distributed.

1410.19: List and show the cost of each item of administrative and general expense for which a specific account is not provided in the 1410 group of accounts. If only a portion of the cost of any item will be chargeable to this project, show the percentage and amount that will be so chargeable; and show, in a footnote, the percentage distribution to other projects.

1430.2: List all planning consultants not paid under the architect's contract and, for each, identify and show the cost of the services provided.

1430.7: Provide the same information required for 1410.1 and 1410.2, listing employees of the architect (or PHA when use of PHA employees has been previously approved) who will perform inspection work for the project.

1450: Where off-site facilities are proposed to be included, identify and show the cost of such facilities and provide justification for including such costs in TDC.

1465: Identify and show the cost of each item included in this account.

1475: Complete the Table below and, on a separate attachment, list and show the cost of each item included in each sub-account.

Nondwelling Equipment (1475)	Cost
1475.1 Office Furniture and Equipment	
1475.2 Maintenance Equipment	
1475.3 Community Space Equipment	
1475.7 Automotive Equipment	
1475.9 Expendable Equipment	
Total Nonswelling Equipment	

1495: State the number of households and businesses to be displaced, and identify and show the estimated cost of relocation services and payments to be provided.

Copy Number:	PR/Project Number:

Subpart IV - New Construction – Prototype Cost Comparison Percentage

A. Dwelling Construction and Equipment (DC&E) Cost from Subpart I
1. Total for Account 1460 $_____
2. Total for Account 1465 _____
3. Subtotal (1 + 2) $_____
4. Contingency (_____% x line 3) _____
5. Total DC&E (3 + 4) $_____

B. PPCL Total _____
(Attach calculation from PP, Part I, Subpart B, Item 3)

C. Comparison Percentage =_____%
(Line A5 ÷ Line B)

Subpart V - Acquisition–Development Cost Comparison Percentage

A. Proposed TDC from Subpart I $_____

B. Hypothetical TDC $_____
(Attach calculation from PP, Part I, Subpart B, Item 5a or, if applicable, other estimate and rationale.)

C. Comparison Percentage =_____%
(Line A ÷ Line B)

Subpart VI - Detail of Donations

Line No.	Item (Please List)	Amount (Value)
1		
2		
3		
4		
	Total	

Subpart VII - Previously Approved Budgets

List chronologically the dates and TDC on all previously approved budgets, beginning with the PHA Proposal (PP) Budget, and state the purpose (i.e., one of the budgets listed in the "Status" block on page 1 and any amendments thereto).

Date	TDC	Purpose
		PP

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Submitted By: Name & Title of Official Authorized to Sign for PHA:

Signature of PHA's Authorized Official & Date:

X

For HUD Use Only

Recommended for Approval By: Name & Title of Authorized Official:

Signature of Authorized Official & Date:

X

Approved By: Name & Title of Authorized Official:

Signature of Authorized Official & Date:

X

This form HUD-52484 includes the account classification numbers, actual development cost incurred, actual contract award balance, and total development cost which are apart of a Public Housing Agency's (PHA's) development cost budget/cost statement for development of a public housing project.

PHAs to provide information on the amount of monies which will be needed to develop the project and other costs associated with it. The information collected in the proposal is used by HUD for review and approval of development funds.

Public Reporting Burden for this collection of information is estimated to average 10.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0036), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. Do not send this form to the above address.

Responses to this collection of information mandatory to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

HUD may not conduct or sponsor, and person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Instructions for Preparing Development Cost Budgets/Cost Statements, Form HUD-52484

A. General

This form HUD-52484 shall be used for all Development Cost Budgets and Statements identified in the "Status" section on page 1 and should be carefully completed for each type of submission. For information supplementing these instructions, see Public Housing Development Handbook 7417.1 Descriptions of the budget accounts to which costs should be charged are set forth in Low-Rent Technical Accounting Guide 7510.1, Chapter 4, ~~Section 15.~~ The HUD Field Office, upon request, will assist PHAs in the distribution of costs to individual accounts.

1. **General Preparation.** The Form should cover all of the housing to be built under a single Contract of Sale/Construction Contract, whether on one or several sites. The "Dwelling Units" section at the top of page 1 shall show, in the "Elderly" block, the total of all units designed specifically for the elderly, including any such units which have more than one bedroom; and the other sections at the top of the page shall be completed as appropriate. Round out all amounts to even dollars. Where descriptions or supplementary data are required, use an attached sheet, identifying the item to which it is applicable.

   I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

2. **Use of Form as Development Cost Budget**
   a. When first used (with form HUD-52483-A, PHA Proposal (PP), Part I, Subpart B, Item 2), the PHA shall submit an original and 2 copies to the HUD Field Office, as in the case of the PP and other related attachments. (If any major changes are proposed following approval of the PP, a revised PP and PP budget shall be submitted in accordance with Handbook 7417.1.) If there was no preliminary loan, the PHA shall enter the estimated costs for development of the project in column (f) and complete column (g) as appropriate. If the PHA received a preliminary loan, the form shall be completed as follows. In column (b), cross out the words "Latest Approved Budget" in the heading and enter the date the Preliminary Loan Contract was executed; enter the words "Preliminary Loan Contract" lengthwise in the column; and enter the total preliminary loan amount in line 58. In columns (c) and (d), enter the latest readily available figures from the books of account maintained for the Preliminary Loan Contract; and, in the heading of column (c), enter the date as of which such figures were taken. In column (e), enter the estimated costs for development of the project. Enter in column (f) the sum of columns (c), (d) and (e); and complete column (g) as appropriate.
   b. For subsequent Development Cost Budgets, submit an original and 2 copies to the HUD Field Office. Enter the date of the latest approved budget in the heading of column (b) and, for each line item, enter the applicable latest approved cost. Enter in columns (c) and (d) the latest readily available figures from the books of account for Accounts 1410 through 1475 and Accounts 1485, 1495, and 1499; and, in the heading of column (c), show the date as of which such figures were taken. Enter in column (e) for each Account 1410 through 1475, 1485, 1495, and 1499 an estimate of any additional cost to be incurred in completing the development work. Enter in column (v) the sum of columns (c), (d) and (e); and complete column (g) as appropriate. For Account 1480, which is not applicable to turnkey projects, leave all columns blank until submission of the Contract Award Budget. At that time and thereafter, the entries for Account 1480 shall be as follows:
      (1) For a Contract Award Budget, list each proposed construction contract to be included under Account 1480 in column (a) by name of contractor and type of work. Opposite each such listing, enter in columns (d) and (f) the amount shown in column (3) of the corresponding form HUD-52396, Analysis of Main Construction Contact (or, in cases where a change in any bid amount is proposed, enter the amount shown in column (5) of form HUD-52396 and identify change order(s) included in the contract amount). Amounts for all work and equipment not covered by contracts shall remain in the appropriate subsidiary account.
      (2) For each budget submitted after a Contract Award Budget, enter in column (c) the total of payments made to each contractor; in column (d) the balance owing under each original contract; in column (e) the amount of any increases or decreases for change orders known to be needed at the time the budget is submitted; and in column (f) the sum of columns (c), (d) and (e). If the sum of columns (c) and (d) differs from the original contract amount in column (f) of the latest approved budget because of executed change orders, identify such change orders.
      (3) For the Final Budget, this Account 1480 is to be left blank and the amounts for each completed construction contract shall be redistributed to the appropriate Accounts 1450 through 1475, 1485, and 1499. On an attachment to the Final Budget, identify each construction contract by name of contractor and type of work; and show the final contract amounts, broken down in to the appropriate Accounts 1450 through 1475, 1485, and 1499.

3. **Use of Form as Cost Statement**
   a. When used as the quarterly Development Cost Control Statement (required during the period beginning with the date a project is placed under an ACC and ending with the date the form HUD-52427, Actual Development Cost Certificate, is submitted for each project), columns (b), (c), (d) and (f) shall be completed; and columns (e) and (g) shall be left blank. However, in cases where the PHA is reasonably certain that it will be necessary to incur additional costs that were not anticipated at the time of submission of the latest approved budget (identified in column (b)), the PHA shall enter the estimated amounts of such additional costs in column (e) so the Field Office will be aware of its budgetary problems and can take appropriate steps to help solve them. (In

such cases, the amount in column (f) will be the sum of columns (c), (d) and (e).) If it is determined that the solution involves a change in any of the latest approved budget amounts, the PHA shall prepare a revised budget and submit it to the Field Office in accordance with instructions in Handbook 7417.1 and Item A2b, above.

b. When used as the Statement of Actual Development Cost (which is submitted simultaneously with form HUD-52427, Actual Development Cost Certificate), only columns (b) and (c) shall be completed for all accounts, except Account 1480 (which requires no entries in any column).

B. **Subpart I – Budget**

1. **Development Method**

a. **Turnkey.** For projects developed under the turnkey method, the account classifications for Developer's Price (lines 1 through 9) are to be completed. Where preselected sites are used, entries should be made in lines 32 through 43, as applicable, for those site costs borne by the PHA prior to the assignment to the developer of the right to purchase the site. The Total Developer's Price (line 9) shall be the price agreed upon by the developer, the PHA and HUD. The amounts entered for site and architectural and engineering services (lines 1 and 7) should be the amounts to be included, where applicable, in the Preliminary Contract of Sale for the eventuality of separate purchase by he PHA. The amount entered for Other (line 98 and Subpart II) should be the sum of (1) Developer's fee and Overhead, exclusive of builder-contractor's overhead and profit which is in other items of the developer's price; (2) Interim Financing; (3) Closing Costs; (4) property taxes and assessments during construction; and (5) State or local sales, excise or other taxes, if any. Planning costs approved by the HUD Field Office will allow for entries in lines 25 and 26, as well as in line 7 (in addition to inspections for which an entry will be made in line 28).

b. **Conventional.** For conventional projects, lines 1 through 9 will remain blank and, instead, those accounts will be completed utilizing lines 25 through 48. For lines 44 through 48, the Schematic Design Documents and the Architect's Estimate of Project Construction Cost will provide a basis for reasonable estimates for costs. Any comments from the HUD Field Office as a result of the prior submission of these documents shall be reflected in the Budget.

c. **Acquisition.** For acquisition projects, Account 1440 will be the approved price for the site, including the structures thereon which are to be acquired for the project; and Accounts 1450 through 1485 will be used for the work to be done. Lines 1 through 9, or 32 through 48, will be completed as required by the development method being used and other instructions herein.

2. **1410 – Administration (lines 10 through 18).** PHAs with experience in the development of low-income housing should estimate development-related administration costs on the basis of such experience, as applicable, for the current development method. For turnkey projects, there will be less administration activity than for conventional projects. The amounts for the various subaccounts shall be the costs of the items of expense which are directly traceable to and essential in the planning, construction and completion of the project, and the prorata amounts of the PHA's total administration costs with respect to the items which are not wholly traceable to the project. Administration (1410) and Planning (1430) Costs ordinarily terminate with the End of the Initial Operating Period. After this date, only costs of personnel employed full time in development work may be charged to these accounts.

3. **1420 – Interest (lines 20 through 23).** For turnkey projects, because of the limited PHA financing until the completed project is acquired, PHA interest shall be limited to not more than 5 percent for 5 months on the total development cost, excluding interest and contingency. If the project is so planned as to be completed and occupied in several stages, PHA interest shall be computed from the time the PHA takes title to completed increments of the projects to not more than 5 percent for 5 months after completion of the last increment. For a conventional project PP budget, interest shall be limited to not more than 5 percent for each 12 months or portion thereof. For budgets subsequent to the PP Budget, Accounts 1420.1 and .2 shall be charged, to the extent specifically approved by HUD, in accordance with Handbook 7510.1. Line 26, Total Interest, is the amount which results after the deducting interest earned on investments from the interest charged.

4. **1425 – Initial Operating Deficit (line 24).** In the absence of dependable previous experience data on which to base a preliminary estimate of the initial operating deficit, an allowance of not to exceed $50 per dwelling unit may be used unless more is specifically authorized by HUD.

5. **1430 – Planning (lines 25 through 31).** For turnkey projects generally, architectural-engineering services will be included in the Developer's Price except for periodic inspection of construction by an independent architect employed by the PHA (Account 1430.7).

6. **1440.5 – Appraisals (line 36).** No entry shall be made in this Account when HUD performs the appraisal since no fee will be charged. This Account shall be charged with the costs incurred by the PHA for appraisals of land or improvements when provided by fee appraisers.

7. **Donations (lines 53 and 54).** Account 2850 is described in Handbook 7510.1. A donation represents cash and/or the reasonable value of property donated to the project. Any costs met from cash donations and the value of any donations in kind will be included under the appropriate cost account and itemized in Subpart VI. Since donations cannot be included in the Total Development Cost, the total of donations will be subtracted therefrom in Subpart I of the Budget.

8. **Contingency (line 56).** Enter not more than 5 percent for conventional projects, nor more than 1 percent for turnkey, of the Total Before Contingency.

C. **Subpart III – Supporting Data for Cost Estimate in Account 1475 (Lines 6 and 48).** Generally, the PHA provides nondwelling equipment, requiring an entry in line 48 only. Include only nondwelling equipment intended for use in developing the specific project. Account 1475 shall not include automotive passenger vehicles; and shall not, without detailed, itemized justification fully endorsed by the officials involved in its approval, exceed one-half of one percent of the project's Total Development Cost.

D. **Subpart IV – New Construction-Prototype Comparison Percentage** The accounts used in this comparison—1460 and 1465 (lines 3, 4, 45 and 46)—should be carefully prepared. It is particularly important that nondwelling construction and equipment costs (chargeable to Accounts 1470 and 1475) not be combined with the dwelling construction and equipment costs in Accounts 1460 and 1465 because this could adversely affect the prototype comparison percentage. Care should also be taken to assure that, in the case of a turnkey project where the developer and the PHA will each provide certain items of dwelling equipment, the amount in Item A2 of this Subpart is the sum of lines 4 and 46.

Actual Development Cost Certificate

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0036 (exp. 8/31/96)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0036), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. Do not send this form to the above address.

Responses to this collection of information mandatory to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

HUD may not conduct or sponsor, and person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Name of Public Housing Agency: (PHA)

Annual Contributions Contract Number:	Project Number:

The PHA hereby certifies to the Department of Housing and Urban Development as follows:

1. That the total amount of the Development Cost (herein called the "Actual Development Cost") of the Project is $ _____, which amount is shown in detail on the attached Statement of Actual Development Cost;

2. That all development work in connection with the Project has been completed;

3. That the entire Development Cost or liabilities therefor incurred by the PHA have been fully paid;

4. That there are no undischarged mechanics', laborers', contractors', or material-men's liens against such Project on file in any public office where the same should be filed in order to be valid against such Project; and

5. That the time in which such liens could be filed has expired.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Submitted By: Name & Title of Official Authorized to Sign for PHA:

Signature of PHA's Authorized Official & Date:

X

For HUD Use Only

Recommended for Approval By: Name & Title of Authorized Official:

Signature of Authorized Official & Date:

X

Approved By: Name & Title of Authorized Official:

Signature of Authorized Official & Date:

X

Previous Editions are Obsolete

form **HUD-52427** (2/93)
ref. Handbook 7417.1

[FR Doc. 96–24433 Filed 9–23–96; 8:45 am]
BILLING CODE 4210–33–C

[Docket No. FR–4086–N–49]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: November 25, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, telephone number (202) 708–3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Owner/Tenant Certification for Multifamily Housing Programs.

OMB Control Number: 2502–0204.

Description of the need for the information and proposed use: Housing programs, subsidies, rental assistance, eligibility criteria. Information is needed to determine tenant eligibility and to compute tenant annual rents for those occupying HUD subsidized housing units.

Agency form numbers: HUD 50059, 50059D, 50059F, 50059G.

Members of affected public: Businesses or other for-profit, non-profit institutions, individuals or households, federal agencies or employees, small businesses or organizations.

Status of the proposed information collection: Extension without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 17, 1996.

James E. Schoenberger,

Associate General Deputy, A/S Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–24434 Filed 9–23–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4086–N–52]

Office of the Assistant Secretary for Community Planning and Development; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 25, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing & Urban Development, 451–7th Street, SW., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available documents: Patricia Mason, 202–708–3226, Extension 4588 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HOPE for Homeownership of Single Family Homes (HOPE 3).

OMB Control Number, if applicable: 2506–0128.

Description of the need for the information and proposed use: The Homeownership Opportunities for People Everywhere (HOPE 3) Program provides Federal grants to develop and implement homeownership programs for low income people. This information is needed to assist HUD monitor grantees previously awarded HOPE 3 Program Implementation Grants through the collection of data in the Program's Cash and Management Information System, environmental review assessments and annual performance report requirements. The Department does not anticipate additional awards for the HOPE 3 Program. In the event that additional funding becomes available, it is anticipated that at a minimum, HUD will award 40 additional grants through a NOFA and application process.

Agency form numbers, if applicable: SF–424, HUD–40086, 40102–A, 40102–B, 40103, 40104, and 40105.

Members of affected public: State and local governments, nonprofit organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequent of response, and hours of response: The Department estimates that the 258 respondents will require 27,675 hours annually (approximately 100 per respondent) to prepare the information collection.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 22, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–24435 Filed 9–23–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4086–N–51]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: November 25, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Telephone number (202) 708–3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3 Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Pet Ownership in assisted rental housing for the elderly or handicapped.

OMB Control Number: 2502–0342.

Description of the need for the information and proposed use: ''Rental Housing, Household Pets'' No owner of federally assisted rental housing for the elderly or handicapped may prohibit a tenant from having common household pets in the tenant's dwelling unit, or discriminate against any person regarding admission to such housing because of ownership or presence of a pet in the person's dwelling unit.

Agency form numbers: N/A.

Members of affected public: Individuals or Households, State or local governments, businesses or other For-Profit, non-Profit Institutions.

Status of the proposed information collection: Extension without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 17, 1996.

James E. Schoenberger,

Associate General Deputy, A/S Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–24436 Filed 9–23–96; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Water Howellia (Howellia aquatilis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the water howellia (*Howellia aquatilis*). Water howellia is currently known from a total of six geographic areas— one area in each of the States of Idaho, Montana, and California, and three areas in Washington. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before November 25, 1996 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Fish and Wildlife Service, 100 N. Park Ave, Suite 320, Helena, MT 59601. Written comments and materials regarding this plan should be sent to the Field Supervisor at the Helena address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lori Nordstrom, Fish and Wildlife Biologist (see **ADDRESSES** above), at telephone (406) 449–5225.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

Water howellia is an annual aquatic plant restricted to small, vernal, freshwater wetlands that have an annual cycle of filing up with water over the fall, winter, and early spring, followed by drying during the summer months. The plants are extensively branched with submergent or floating stems; both emergent and submergent flowers are produced. The wetlands typically occur in a matrix of forest vegetation, and are

usually bordered in part by broadleaf deciduous trees.

Water howellia is currently known from a total of six geographic areas—one in Idaho (Latah County); three in Washington (one each in Spokane, Clark, and Pierce Counties); one in Montana (Lake and Missoula Counties); and one in California (Mendocino County). Water howellia was believed extirpated from California but was rediscovered in 1996.

Water howellia was listed as a threatened species on July 14, 1994 (59 FR 35860), under the authority of the Act. Water howellia is globally rare (occupying less than 200 acres of habitat rangewide), has extremely narrow ecological adaptations, and electrophoretic tests indicate that it lacks detectable genetic variation within and among occurrences. For these reasons, it is particularly vulnerable to habitat alteration and loss. Water howellia was listed because of current and potential threats to the species and its habitat from competition from invasive plant species, timber harvesting, and intensive livestock use of ponds.

The goal of this recovery plan is to provide an adequate level of conservation for the species and its habitat so that there will be self-sustaining populations distributed throughout its extant range and to guide recovery actions to facilitate delisting of the species. Recovery efforts will focus on development and implementation of habitat management plans for occurrences on public lands; promotion of voluntary protection on private lands; conducting biological and habitat management research; monitoring and surveys of known occurrences and potential habitat; dissemination of educational information; promotion of state-level legal protection; and evaluation of the appropriateness and feasibility of reintroducing water howellia into portions of its historic range.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 17, 1996.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 96–24397 Filed 9–22–96; 8:45 am]

BILLING CODE 4310–55–M

Notice of Extension of Comment Period. Assessment Plan: Lower Fox River/Green Bay Natural Resource Damage Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: Notice is given that the public comment period for the document titled ''Assessment Plan: Lower Fox River/ Green Bay NRDA'' (The Plan'') is extended for 60 days. Initial notice of availability was published on August 23, 1996 with a deadline for submittal of comments of September 23, 1996. This notice extends the comment period until 60 days from the date of publication in the Federal Register.

The U.S. Department of the Interior, The Menominee Indian Tribe of Wisconsin, and the Oneida Tribe of Indians of Wisconsin (''trustees'') are trustees for natural resources considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and 300.610, and Executive Order 12580.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR Part 11. The public review of the Plan announced by this Notice is provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan can be requested from the address listed below. All written comments will be considered by the trustees and included in the Report of Assessment, at the conclusion of the assessment process.

DATES: Written comments on the Plan must be submitted on or before November 25, 1996.

ADDRESSES: Requests for copies of the Plan may be made to: Frank Horvath, U.S. Fish and Wildlife Service, Region 3 (ATTN: ES/EC–NRDA), B.H.W. Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111.

Comments on the Plan should be sent to the U.S. Fish and Wildlife Service at the address listed above. The U.S. Fish and Wildlife Service will provide copies of all comments to the other trustees.

SUPPLEMENTARY INFORMATION: The trustees are undertaking an assessment of damages resulting from the suspected injury to natural resources of the Lower Fox River, Green Bay and Lake Michigan which have been exposed to hazardous substances released by area paper mills and other potential sources. It is suspected that this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended. The Plan addresses the trustees' overall assessment approach and utilizes existing data. Plan addenda may be prepared by the trustees to provide public notice of additional data collection activities.

William F. Hartwig,

Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 96–24466 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Cahuilla Band of Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Cahuilla Band of Indians Liquor Control Ordinance was duly adopted and certified by the Cahuilla General Council of the Cahuilla Band of Indians on September 10, 1994, and August 31, 1996, Resolutions numbered 96–01 and 96–20. The Ordinance provides for the regulation of the sale, possession and consumption of liquor on the Cahuilla Indian Reservation and is in conformity with the laws of the State of California.

DATES: This Ordinance is effective as of September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street NW, MS 4603–MIB, Washington, D.C. 20240–4001; telephone (202) 208–3463.

SUPPLEMENTARY INFORMATION: The Cahuilla Band of Indians Liquor control Ordinance is to read as follows:

Cahuilla Band of Indians Liquor Control Ordinance

Section I—Introduction

101. Title. This ordinance shall be known as the ''Liquor Ordinance of the Cahuilla Band of Indians.''

102. Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Cahuilla Indian Reservation.

Section II—Definitions

201. As used in this ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

202. ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

203. ''Alcoholic Beverage'' is synonymous with the term ''Liquor'' as defined in Section 208 of this Section.

204. ''Bar'' means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of beer, as herein defined.

205. ''Beer'' means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume. For the purposes of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as ''strong beer''.

206. ''Committee'' means the Liquor Licensing Committee of the Cahuilla Band of Indians, whose members shall be selected by the Cahuilla General Council.

207. ''General Council'' means the General Council of the Cahuilla Band of Indians which is composed of the voting membership of the Tribe.

208. ''Liquor'' including the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

209. ''Liquor Store'' means any store at which liquor is sold, and for the purposes of this ordinance, includes a store at which only a portion of which is devoted to the sale of liquor or beer.

210. ''Malt Liquor'' means beer, strong beer, ale, stout, and porter,

211. ''Package'' means any container or receptacle used for holding liquor.

212. ''Public Place'' includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has right of access, and which are generally used by the public. For the purposes of this ordinance, ''Public Place'' shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

213. ''Reservation'' means the Cahuilla Indian Reservation, which is held in trust by the United States Government for the benefit of the Cahuilla Band of Indians.

214. ''Sale'' and ''Sell'' include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

215. ''Spirits'' means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

216. ''Tribe'' means the Cahuilla Band of Indians.

217. ''Reservation Land'' means any land within the exterior boundaries of the Reservation which is held in trust by the United States for the Tribe.

218. ''Wine'' means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.

Section III—Powers of Enforcement

301. Powers. The Committee, in furtherance of the ordinance, shall have the following powers and duties:

a. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Reservation;

b. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Committee to perform its functions, subject to approval of the General Council. Such employees shall be tribal employees;

c. To issue licenses permitting the sale or manufacture or distribution of liquor on the Reservation;

d. To hold hearing on violations of this ordinance or for the issuance or revocation of licenses hereunder;

e. To bring suit in the appropriate court to enforce this ordinance as necessary;

f. To determine and seek damages for violation of this ordinance;

g. To make such reports as may be required by the General Council;

h. To collect taxes and fees levied or set by the Committee, and to keep accurate records, books and accounts; and

i. To exercise such other powers as are delegated by the General Council.

302. Limitation on Powers. In the exercise of its powers and duties under this ordinance, the Committee and its individual members shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee.

303. Inspection Rights. The premises on which liquor is sold or distributed shall be open for inspection by the Committee at all reasonable time for the purposes of ascertaining whether the rules and regulations of this ordinance are being complied with.

Section IV—Sales of Liquor

401. Licenses Required. No sales of alcoholic beverages shall be made, except at a tribally-licensed or tribally-owned business operated on Reservation land within the exterior boundaries of the Cahuilla Indian Reservation.

402. Sales for Cash. All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards.

403. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Reservation and sells it, whether in the original container or not, shall be guilty of a

violation of this ordinance and shall be subjected to paying damages to the Tribe as set forth herein.

Section V—Licensing

501. Applicable for Tribal Liquor License Requirements. No tribal license shall issue under this ordinance except upon a sworn application filed with the Committee containing a full and complete showing of the following:

a. Satisfactory proof that the applicant is or will be duly licensed by the State of California.

b. Satisfactory proof that the applicant is of good character and reputation among the people of the Reservation and that the applicant is financially responsible.

c. The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license.

d. Agreement by the applicant to accept and abide by all conditions of the tribal license.

e. Payment of a license fee as prescribed by the Committee.

f. Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.

g. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least 30 days prior to consideration by the Committee and has been published at least twice in such local newspaper serving the community that may be affected by the license. The notice shall state the date, time, and place when the application shall be considered by the Committee pursuant to section 502 of this ordinance.

502. Hearing on Application for Tribal Liquor License. All applications for a tribal liquor license shall be considered by the Committee in open session at which the applicant, his/her attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Committee, by secret ballot, shall determine whether to grant or deny the application based on:

1. Whether the requirements of section 501 have been met; and

2. Whether the Committee, in its discretion, determines that granting the license is in the best interest of the Tribe.

In the event that the applicant is a member of the General Council, or a member of the immediate family of a General Council member, such member shall not vote on the application or participate in the hearings as a Committee member.

503. Temporary Permits. The Committee or their designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed three (3) days to any person applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in Section 504 of this ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee, as set by the Committee, will be assessed on temporary permits.

504. Conditions of the Tribal License. Any tribal license issued under this title shall be subject to such reasonable conditions as the Committee shall fix, including, but not limited to the following:

a. The license shall be for a term not to exceed 2 years.

b. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

c. The licensed premises shall be subject to patrol by the tribal police department, and such other law enforcement officials as may be authorized under applicable law.

d. The licensed premises shall be open to inspection by duly authorized tribal officials at all times during the regular business hours.

e. Subject to the provisions of subsection ''g'' of this section, no intoxicating beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the Committee, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of California.

f. No liquor shall be sold within 200 feet of a polling place on tribal election days, or when a referendum is held of the people of the tribe, and including special days of observation as designated by the Committee.

g. All acts and transactions under authority of the tribal liquor license shall be in conformity with the laws of the State of California, as required by federal law, and shall be in accordance with this ordinance and any tribal license issued pursuant to this ordinance.

h. No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.

i. There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

505. License Not a Property Right. Notwithstanding any other provision of this ordinance, a tribal liquor license is a mere permit for a fixed duration of time. A tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

506. Assignment or Transfer. No tribal license issued under this ordinance shall be assigned or transferred without the written approval of the Committee expressed by formal resolution.

Section VI—Rules, Regulations, and Enforcement

601. Sales or Possession With Intent to Sell Without a Permit. Any person who shall sell or offer for sale or distribute or transport in any manner, any liquor in violation of this ordinance, or who shall operate or shall have liquor in his/her possession with intent to sell or distribute without a permit, shall be guilty of a violation of this ordinance.

602. Purchases From Other Than Licensed Facilities. Any person within the boundaries of the Reservation who buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this ordinance.

603. Sales to Persons Under the Influence of Liquor. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this ordinance.

604. Consuming Liquor in Public Conveyance. Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee or such person who shall knowingly permit any person to drink any liquor in any public conveyance shall be guilty of an offense. Any person who shall drink any liquor in a public conveyance shall be guilty of a violation of this ordinance.

605. Consumption or Possession of Liquor by Persons Under 21 Years of Age. No person under the age of 21 years shall consume, acquire or have in his/her possession any alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his/her premises or any premises under his/her control except in those situations set out in this section. Any person violating this section shall be guilty of a separate

violation of this ordinance for each and every drink so consumed.

606. Sales of Liquor to Persons Under 21 Years of Age. Any person who shall sell or provide liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.

607. Transfer of Identification to Minor. Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this ordinance.

608. Use of False or Altered Identification. Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

609. Violation of This Ordinance. Any person guilty of a violation of this ordinance shall be liable to pay the Tribe a penalty not to exceed $500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance. In addition to any penalties so imposed, any license issued hereunder may be suspended or canceled by the Committee for the violation of any of the provisions of this ordinance, or of the tribal license, upon hearing before the Committee after 10 days notice to the licensee. The decision of the Committee shall be final.

610. Acceptable Identification. Where there may be a question of a person's right to purchase liquor by reason of his/her age, such person shall be required to present any one of the following issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

1. Driver's license of any state or identification card issued by any State Department of Motor Vehicles;
2. United States Active Duty Military;
3. Passport.

611. Possession of Liquor Contrary to This Ordinance. Alcoholic beverages which are possessed contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Committee to enforce this section shall have the authority to, and shall seize, all contraband.

612. Disposition of Seized Contraband. Any officer seizing contraband shall preserve the contraband in accordance with applicable law. Upon being found in violation of the ordinance by the Committee, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Section VII—Taxes

701. Sales Tax. There is hereby levied and shall be collected a tax on each sale of alcoholic beverages on the Reservation in the amount of one percent (1%) of the amount actually collected, including payments by major credit cards. The tax imposed by this section shall apply to all retail sales of liquor on the Reservation and shall preempt any tax imposed on such liquor sales by the State of California.

702. Payment of Taxes to Tribe. All taxes from the sale of alcoholic beverages on the Reservation shall be paid over to the agent of the Tribe.

703. Taxes Due. All taxes for the sale of alcoholic beverages on the Reservation are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

704. Reports. Along with payment of the taxes imposed herein, the taxpayers shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

705. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the Committee, such a review or audit is necessary to verify the accuracy of reports.

Section VIII—Profits

801. Disposition of Proceeds. The gross proceeds collected by the Committee from all licensing provided from the taxation of the sales of alcoholic beverages on the Reservation shall be distributed as follows:

a. For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.

b. The remainder shall be turned over to the account of the Tribe.

Section IX—Severability and Miscellaneous

901. Severability. If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

902. Prior Enactments. All prior enactments of the Committee which are inconsistent with the provisions of this ordinance are hereby rescinded.

903. Conformance with California Laws. All acts and transactions under this ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1161.

904. Effective Date. This ordinance shall be effective on September 24, 1996.

Section X—Amendment

1001. This ordinance may only be amended or repealed by a majority vote of those actually voting in a mailed ballot vote to the General Council.

Section XI—Sovereign Immunity

1101. Nothing contained in this ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit.

Dated: September 18, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–24366 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[AK–962–1410–00–P]

Alaska; Notice for Publication AA–11049, Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Chugach Alaska Corporation for 15.51 acres. The lands involved are in the vicinity of Constantine Harbor, Alaska.

U.S. Survey No. 10229, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 24, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the

Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–24404 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–84–P

[AK–962–1410–00–P]

Alaska; Notice for Publication AA–10781; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Chugach Alaska Corporation for 5.64 acres. The lands involved are in the vicinity of Orca Bay, Alaska.

Lot 1, U.S. Survey No. 10199, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 24, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–24405 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–84–U

[CO–010–1110–00]

Temporary Travel Restrictions for the Serviceberry Mountain Area of Colorado

AGENCY: Little Snake Resource Area, Bureau of Land Management, DOI.

ACTION: Order of area, road and trail use restriction.

SUMMARY: This order closes public lands newly acquired through land exchange from the Reserve Coal Properties Company to motorized vehicle use (except snowmobiles) in the Serviceberry Mountain area of the Little Snake Resource Area, Craig District. This order is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a) as a temporary measure while the off-highway vehicle (OHV) management portion of the Little Snake Resource Area Resource Management Plan is reviewed and modified as needed to address public issues, concerns and needs, as well as resource uses, development, impacts and protection.

This order affects all public lands in the Serviceberry Mountain Area of Moffat County within:

T. 12 N., R. 90 W., Section 17, Lots 9–16
Section 18, Lots 9, 10
Section 19, Lots 5–7, 10
Section 20, Lots 1–16
Section 29, Lots 1–8
Section 30, Lots 5, 9–11, 15, 16

A metes and bounds parcel comprised of those portions of the W½SE¼ of section 29 and those portions of Lots 8 and 14, NW¼NE¼, SE¼NW¼, and NE¼SW¼ of section 30 lying southeasterly of an existing fence line extending from the northeast corner of the NW¼SE¼ of section 19 to the southwest corner of Lot 14 of section 30.

EFFECTIVE DATES: This restriction order shall be effective October 4, 1996, and shall remain in effect until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: Current OHV use designations for adjoining public lands in the Serviceberry Mountain area are under similar temporary motorized vehicle restrictions. State and local agencies and neighboring landowners expressed concerns that recent easements and acquisitions would open public lands in the Serviceberry Mountain area to motorized traffic and cause unacceptable impacts to natural resources, especially wildlife and soils. In addition, consistent motor vehicle limitations are needed throughout the adjoining public lands in the Serviceberry Mountain area to avoid public confusion. The affected public lands includes identified soil erosion hazards and important high quality big game habitat. Given due consideration of the concerns expressed by the public and the potential impacts of unrestricted motorized vehicle use, a modification of existing OHV use designations is necessary to adequately protect natural resources on public land, minimize conflicts with other uses, prevent trespass problems, and ensure public safety until these issues can be more thoroughly addressed in activity planning for these areas. Provisions will be made to allow for necessary motorized travel on the public lands for administrative purposes and to facilitate non-motorized public access to the public lands. The area, roads, and trails affected by this order will be posted with appropriate regulatory signs. Information, including detailed maps of the restricted area, roads and trails will be available at the access sites and in the Resource Area Office and District Office at the addresses shown below.

Persons who are exempt from the restrictions contained in this notice include:

1. Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities.

2. BLM employees engaged in official duties.

3. Persons or agencies holding a valid permit or right-of-way on or across the restricted public land for access to private land, for purposes related to the access of private land only.

4. Persons or agencies holding a special use permit or right-of-way for access to maintenance and operation of authorized facilities within the restricted area, for purposes related to access for maintenance and operation of authorized facilities, and provided such motorized use is limited to the routes specifically identified in the special use permit or right-of-way.

5. Grazing permittees authorized during the permitted grazing season for grazing related purposes provided such motorized use is limited to existing roads and trails and subject to any additional conditions in the grazing permit. Any motorized use before or after the permitted grazing season necessary for maintenance and operation of range facilities shall require advance approval by the authorized officer specifically authorizing such use and subject to whatever restrictions are deemed necessary.

PENALTIES: Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT:

John Husband, Area Manager, Little Snake Resource Area, 1280 Industrial

Avenue, Craig, Colorado 81625–2952 (970) 824–4441.

Mark Morse, District Manager, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129 (970) 824–8261.

Dated: September 17, 1996.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 96–24437 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–JB–M

[ID–933–1020–01]

Change of Address/Relocation and Public Room Closure: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Effective on or about October 15, 1996, the Idaho State Office will be relocating to 1387 S. Vinnell Way, Boise, Idaho 83709. Please address all correspondence to this address.

Because of the relocation of the BLM Idaho State Office, certain records will be unavailable for inspection and the Public Room will be closed on the following dates: October 9 through October 18, 1996. We plan to have the Public Room open for business and records review on October 21, 1996 from 9 a.m. to 4 p.m., normal Public Room hours. Records and services associated with the Public Room that will be unavailable during the closure include but are not limited to the following: Mining Claim Records and Computerized Reports, GLO Survey Records, Patent Records, Right-of-Way Records, Map Sales.

EFFECTIVE DATE: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Linda Matthews, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3268.

Dated: September 18, 1996.

Martha G. Hahn,

State Director.

[FR Doc. 96–24403 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–GG–M

[NV–943–1430; N–61025]

Non-Competitive Sale of Public Lands in Nye County, NV

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public land near the Town of Pahrump, Nye County, Nevada, has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of P.L. 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 20 S., R. 54 E.

Sec. 33: N½N½, N½SE¼NW¼, S½NE¼, and NE¼NW¼SE¼, containing 310 acres, more or less.

The above described land, situated in Nye County, Nevada, is being offered as a direct sale to Rupert Bragg-Smith for the purpose of developing an advanced driving school. Only those lands north of State Route 160 would be sold. The land is not required for any Federal purpose. The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium, saleable minerals, and locatable minerals, if locatable minerals are present.

and will be subject to:

1. An easement for roads, public utilities and flood control purposes as specified by Nye County and/or the Town of Pahrump.

2. Valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108. Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever comes first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, NV 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: September 17, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–24440 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–HC–P

[CO–956–96–1420–00]

Colorado: Filing of Plats of Survey

September 9, 1996.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., September 9, 1996. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 5, T. 11 S., R. 80 W., Sixth Principal Meridian, Group 1071, Colorado, was accepted July 18, 1996.

The plat representing the dependent resurvey of portions of the Colorado-Wyoming State Boundary, from the 79th to the 85th Mile Post, through Ranges 73 and 74 West, and a portion of the subdivisional lines, T. 12 N., R. 74 W., Sixth Principal Meridian, Group 1076, Colorado, was accepted July 9, 1996.

The plat representing the metes-and-bounds survey of irregular lots in sections 5 and 6, T. 8 N., R. 73 W., Sixth Principal Meridian, Group 1130, Colorado, was accepted July 2, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and the metes-and-bounds survey of an irregular lot, T. 8 N., R. 71 W., Sixth Principal Meridian, Group 1130, Colorado, was accepted July 2, 1996.

These surveys were made to satisfy certain administrative needs of the USDA, Forest Service.

The plats representing the dependent resurvey of the Eighth Standard Parallel North (South boundary), T. 33 N., R. 15 W.; T. 33 N., R. 16 W.; and T. 33 N., R. 17 W., New Mexico Principal Meridian, Group 1100, Colorado, were approved July 17, 1996.

This survey was made to satisfy certain administrative needs of the Ute Mountain Tribe through the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the west boundary and the subdivision of sections 6 and 8, T. 34 N., R. 9 W., (North of the Ute Line), New Mexico

Principal Meridian, Group 1127, Colorado, was approved July 11, 1996.

This survey was made to satisfy certain administrative needs of the Bureau of Reclamation.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 96–24447 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–JB–P

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved collection.

SUMMARY: The Department of the Interior has submitted a proposal for the collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act). The Act requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests. The Act also provides that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by October 24, 1996.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0079), Washington, D.C. 20503.

Send a copy of your comments to the Chief, Engineering and Standards Branch, Mail Stop 4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Standards Branch, Mail Stop 4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817; telephone (703) 787–1600. You may obtain copies of the proposed collection of information and related forms by contacting MMS's Clearance Officer at (703) 787–1242.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart G, Abandonment of Wells.

OMB Number: 1010–0079.

Abstract: Respondents provide annual reports describing plans for reentry to complete or permanently abandon a well. For MMS to decide the necessity for allowing a well to be temporarily abandoned, the lessee/operator must show that there is a reason for not permanently abandoning the well and that the temporary abandonment is not a significant threat to fishing, navigation, or other uses of the seabed. If MMS did not collect the information, MMS could not determine: (a) The intent of the lessee, (b) if the final disposition of the well is being diligently pursued, (c) any deviations from the approved Exploration or Development and Production Plan, and (d) if the lessee/operator has documented the temporary plugging of the well and has marked the location.

Description of Respondents: Federal OCS oil and gas lesses.

Frequency: On occasion with subsequent annual reports.

Estimated Number of Respondents: 130 respondents providing 1550 responses.

Estimated Total Annual Burden on Respondents: 775 burden hours.

Type of Request: Extension of currently approved collection.

Form Number: N/A

Comments: The OMB is required to make a decision concerning the proposed collection of information between 30 and 60 days after publication of this notice in the Federal Register. Therefore, a comment to OMB is best ensured of having its full effect if OMB receives it within 30 days of publication.

Bureau Clearance Officer: Carole deWitt, (703) 787–1242.

Dated: August 15, 1996.

E.P. Danenberger,

Acting Deputy Associate Director for Operations and Safety Management.

[FR Doc. 96–24445 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 14, 1996. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 9, 1996.

Carol D. Shull,

Keeper of the National Register.

California

El Dorado County

Vikingsholm, 10001 Emerald Bay Rd., South Lake Tahoe vicinity, 96001078

Sacramento County

American River Grange Hall No. 172, 2720 Kilgora Rd., Rancho Cordova vicinity, 96001079

Stanislaus County

Riverbank Branch Library (Carnegie Libraries MPS) 3237 Santa Fe St., Riverbank, 96001077

Ventura County

Grandma Prisbrey's Bottle Village, 4595 Cochran St., Simi Valley, 96001076

Colorado

Mesa County

Fruita Museum, 432 E. Aspen, Fruita, 96001080

Kansas

Harvey County

Bergtholdt House, 205 E. 5th, Halstead, 96001081

Louisiana

Caddo Parish

Fairfield Historic District (Boundary Increase), 948 Boulevard St., Shreveport, 96001083

St. Tammany Parish, Salmen House, 2854 Front St., Slidell, 96001082

Maryland

Prince George's County

University Park Historic District, Bounded by Baltimore Ave., MD 410 and Adelphi Rd., University Park, 96001084

Baltimore Independent City

Shaarei Tfiloh Synagogue, 2001 Liberty Heights Ave., Baltimore, 96001085

Massachusetts

Norfolk County

Norwood Memorial Municipal Building, 566 Washington St., Norwood, 96001086

Missouri

St. Charles County

St. Charles Historic District (Boundary Increase III), 100, 200, and 300 block of N. Main St., St. Charles, 96001087

New Jersey

Atlantic County

Ventnor City Hall, 6201 Atlantic Ave., Ventnor, 96001088

North Carolina

Haywood County

Ray, Clyde H., Sr., House, 803½ Love Ln., Waynesville, 96001089

South Carolina

Richland County

Big Lake Cattle Mound (Congaree Swamp National Monument MPS), Address Restricted, Hopkins vicinity, 96001092

Brady's Cattle Mound (Congaree Swamp National Monument MPS) Address Restricted, Hopkins vicinity, 96001094

Bridge Abutments (Congaree Swamp National Monument MPS) Address Restricted, Hopkins vicinity, 96001093

Cattle Mound #6 (Congaree Swamp National Monument MPS) Address Restricted, Hopkins vicinity, 96001095

Cook's Lake Cattle Mound (Congaree Swamp National Monument MPS) Address Restricted, Hopkins vicinity, 96001096

Cooner's Cattle Mound (Congaree Swamp National Monument MPS) Address Restricted, Hopkins vicinity, 96001097

Dead River Cattle Mound (Congaree Swamp National Monument MPS) Address Restricted, Hopkins vicinity, 96001098

Dead River Dike (Congaree Swamp National Monument MPS) Address Restricted, Hopkins vicinity, 96001099

Northwest Boundary Dike (Congaree Swamp National Monument MPS) Address Restricted, Hopkins vicinity, 96001100

Southwest Boundary Dike (Congaree Swamp National Monument MPS) Address Restricted, Hopkins vicinity, 96001101

Texas

Bell County

State Highway 53 Bridge at the Leon River (Historic Bridges of Texas MPS), FM 817, 2.5 mi. E of jct. with FM 93, Belton, 96001119

Bexar County

State Highway 3–A Bridge at Cibolo Creek (Historic Bridges of Texas MPS) I–10 at the Bexar and Guadalupe Cnty. line, Schertz vicinity, 96001112

Burnet County

State Highway 29 Bridge at the Colorado River (Historic Bridges of Texas MPS) TX 29 at the Llano Cnty. line, Buchanan Dam vicinity, 96001116

Caldwell County

State Highway 3–A Bridge at Plum Creek (Historic Bridges of Texas MPS) US 90—US 183, .5 mi. W of jct. with I–10, Luling vicinity, 96001107

Collingsworth County

US 83 Bridge at the Salt Fork of the Red River (Historic Bridges of Texas MPS) US 83, 16 mi. S of Wheeler Cnty. line, Wellington vicinity, 96001117

Colorado County

State Highway 3 Bridge at the Colorado River (Historic Bridges of Texas MPS) US 90, .6 mi. E of jct. with Loop 329, Columbus, 96001111

De Witt County

State Highway 27 Bridge at the Guadalupe River (Historic Bridges of Texas MPS) US 87, .13 mi. S of jct. with US 183, Cuero vicinity, 96001122

Fayette County

State Highway 71 Bridge at the Colorado River (Historic Bridges of Texas MPS) TX 71, .8 mi. E of jct. with FM 609, La Grange, 96001120

Harris County

State Highway 35 Bridge at the West Fork of the San Jacinto River (Historic Bridges of Texas MPS) US 59, 1.4 mi. N of jct. with FM 1960, Humble vicinity, 96001110

Jasper County

US 190 Bridge at the Neches River (Historic Bridges of Texas MPS) US 190 at the Jasper and Tyler Cnty. line, Jasper vicinity, 96001121

Jefferson County

Port Arthur—Orange Bridge (Historic Bridges of Texas MPS) TX 87 at the Jefferson and Orange Cnty. line, Groves vicinity, 96001127

Kaufman County

State Highway 34 Bridge at the Trinity River (Historic Bridges of Texas MPS) TX 34 at the Ellis and Kaufman Cnty. line, Rosser vicinity, 96001109

Kimble County

State Highway 27 Bridge at the South Llano River (Historic Bridges of Texas MPS) Loop 481, .2 mi. E of 6th St., Junction, 96001124

State Highway 27 Bridge at Johnson Fork (Historic Bridges of Texas MPS) I–10, .6 mi. W of jct. with FM 2169, Junction vicinity, 96001113

Knox County

State Highway 16 Bridge at the Brazos River (Historic Bridges of Texas MPS) TX 6, 6 mi. S of jct. with US 82, Benjamin vicinity, 96001123

Lamar County

State Highway 5 Bridge at High Creek (Historic Bridges of Texas MPS) FM 1509, 1.8 mi. W of jct. with FM 38, Brookston vicinity, 96001102

State Highway Bridge 5 at Big Pine Creek (Historic Bridges of Texas MPS) FM 1510, 1.4 mi. E of jct. with FM 38, Brookston vicinity, 96001103

Lampasas County

US 190 Bridge at the Colorado River (Historic Bridges of Texas MPS) US 190 at the Lampassand San Saba Cnty. line, Lometa vicinity, 96001125

Liberty County

State Highway 3 Bridge at the Trinity River (Historic Bridges of Texas MPS) US 90, 1.3 mi. W of jct. with FM 2684, Liberty, 96001114

Mason County

State Highway 9 Bridge at the Llano River (Historic Bridges of Texas MPS) US 87, 10 mi. S of TX 29, Mason vicinity, 96001128

Palo Pinto County

US 281 Bridge at the Brazos River (Historic Bridges of Texas MPS) US 281, 2.2 mi. N of I–20, Santo vicinity, 96001126

Parker County

State Highway 89 Bridge at the Brazos River (Historic Bridges of Texas MPS) I–20, 1.7 mi. W of jct. with FM 113, Millsap vicinity, 96001115

Shackelford County

Hubbard Creek Bridge (Historic Bridges of Texas MPS) FM 601, 7.5 mi. E of jct. with TX 6, Albany vicinity, 96001105

State Highway 23 Bridge at the Clear Fork of the Brazos River (Historic Bridges of Texas MPS) US 283, 2.3 mi. S of Throckmorton Cnty. Line, Albany vicinity, 96001106

Travis County

Montopolis Bridge (Historic Bridges of Texas MPS) US 183, 8.1 mi. S of jct. with I–35, Austin, 96001118

Moore's Crossing Historic District (Southeast Travis County MPS) Roughly bounded by FM 973, old Burleson Rd., and Onion Cr., Austin, 96001091

Uvalde County

State Highway 3 Bridge at the Nueces River (Historic Bridges of Texas MPS) US 90, 13 mi. E of jct. with Kinney Cnty., Uvalde vicinity, 96001108

Wichita County

Beaver Creek Bridge (Historic Bridges of Texas MPS) FM 2326, 1 mi W of jct. with TX 25, Electra vicinity, 96001104.

[FR Doc. 96–24456 Filed 9–23–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

United States Parole Commission

Sunshine Act Meeting; Public Announcement; Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

TIME AND DATE: 1:30 p.m., Monday, September 23, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

ADDITIONAL MATTER TO BE CONSIDERED: The following matter has been added to the agenda for the Parole Commission business meeting. Earlier notice of this meeting and the complete agenda was published on September 18, 1996, [61 FR 49155]. The additional matter is as follows:

Interim Rule Governing Commissioner Decision-making for a Three-Member U.S. Parole Commission.

Earlier notice of this agenda item could not be made because of the recent passage of legislation by the House of Representatives in regard to the U.S. Parole Commission. This matter must be considered at this meeting due to the anticipation of the legislation becoming law before the end of the month.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 19, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 96–24577 Filed 9–20–96; 12:43 pm]

BILLING CODE 4401–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Impact of Alternative Tax Reform Proposals on ERISA Employer-Sponsored Plans; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 10, 1996, in Room S–3215 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will be held from 9:30 a.m. until approximately noon, is for working group members to review public testimony presented this year on various federal tax reform proposals and the impact they may have on employer-sponsored ERISA plans. The Working Group will begin formulating its final report at the session.

There will be no full council session in October.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before September 27, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 3 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October. 3, 1996.

Signed at Washington, DC, this 18th day of September, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–24449 Filed 9–23–96; 8:45 am]

BILLING CODE 4510–29–M

Working Group Studying Third Party Trustees To Protect Plan Participants; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Protections for Benefit Plan Participants of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 9, 1996, in Room S–3215 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will be held from 1 p.m. until approximately 3:30 p.m., is for Working Group members to review testimony received thus far in the Council year and for them to begin formulating a report on the issue.

There will be no full council meeting in October.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before September 27, 1996 to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Protections for Benefit Plan Participants of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 3, at the address indicated in the notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty copies of such statements should be sent to the Acting Executive Secretary of the

Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 3, 1996.

Signed at Washington, DC, this 18th day of September, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–24450 Filed 9–23–96; 8:45 am]

BILLING CODE 4510–29–M

Working Group on Guidance for Selecting and Monitoring Service Providers Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Guidance for Selecting and Monitoring Service Providers of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 9, 1996, in Room S3215 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, N.W., Washington, D.C. 20210.

The purpose of the meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to review testimony taken thus far in the year on how to guide plans in selecting investment consultants and advisers and for them to begin formulating their recommendations to ultimately be presented at the full Council's meeting on November 13.

There will be no full council meeting in October.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before September 27, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Guidance for Selecting and Monitoring Service Providers should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 3, 1996, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 3.

Signed at Washington, DC, this 18th day of September, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–24451 Filed 9–23–96; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, October 1, 1996.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6744 Recommendations to FAA: Boeing 737 Directional Control System Improvements and Unusual Attitude Recovery Training.

6745 Recommendations to FAA: American Airlines Accident near Buga, Colombia, December 20, 1995.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: September 20, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–24554 Filed 9–20–96; 10:05 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–20 issued to Consumers Power Company (the licensee) for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would revise the Palisades Technical Specifications (TS) to extend the surveillance interval frequency for the primary coolant pump (PCP) flywheels by one operating cycle. By letter dated January 18, 1996, the licensee previously submitted a request to amend the TS to delete the requirement to perform PCP flywheel inspections. NRC review of the original request will not be completed in time for the upcoming refueling outage scheduled for November 1996; therefore, the licensee has submitted this separate request to extend the surveillance frequency by one operating cycle. The licensee's August 14, 1996, submittal to extend the surveillance frequency stated that the no significant hazards consideration determination presented in its January 18, 1996, submittal remains bounding.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed change to the Technical Specifications would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Technical Specifications would delete the requirement to perform non-destructive examination of the upper flywheel on the PCPs. The fracture mechanics analyses conducted to support the change show that a preexisting crack sized just below detection level will not grow to the flaw size necessary to result in flywheel failure within the life of the plant. This analysis conservatively assumes minimum material properties, maximum flywheel accident speed, location of the flaw in the highest stress area and a number of startup/

shutdown cycles eight times greater than expected. Since an existing flaw in the flywheel will not grow to the allowable flaw size under normal operating conditions or to the critical flaw size under LOCA [loss-of-coolant accident] conditions over the life of the plant, elimination of inservice inspection for such cracks during the plant's life will not involve a significant increase in the probability of an accident previously considered.

The proposed changes do not increase the amount of radioactive material available for release or modify any systems used for mitigation of such releases during accident conditions. Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to the Technical Specifications would not change the design, configuration, or method of operation of the plant and therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to the Technical Specifications would not result in a significant reduction in the margin of safety. Significant conservatisms have been used for calculating the allowable flaw size, critical flaw size and crack growth rate in the PCP flywheels. These include minimum material properties, maximum flywheel accident speed, location of the postulated flaw in highest stress area and a number of startup/shutdown cycles eight times greater than expected. Since an existing flaw in the flywheel will not grow to the maximum allowable flaw size under normal operating conditions or to the critical flaw size under LOCA conditions over the life of the plant, elimination of inservice inspections for such cracks during the plant's life will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 24, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Van Wylen Library, Hope College, Holland, Michigan 49423. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John Hannon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 14, 1996, and the related application dated January 18, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 18th day of September 1996.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–24410 Filed 9–23–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–397]

Washington Public Power Supply System; WPPSS Nuclear Project No. 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the technical specifications (TSs) for Facility Operating License No. NPF–21, issued to Washington Public Power Supply System (the Supply System or the licensee) for operation of the WPPSS Nuclear Project No. 2 (WNP–2), located in Benton County, Washington.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise the existing Technical Specifications (TS) in its entirety and incorporate the guidance provided in NUREG–1434, ''Improved BWR/6 Technical Specifications,'' Revision 1, April 1995. The proposed action is in accordance with the licensee's amendment request dated December 8, 1996, as supplemented by letter dated July 9, 1996.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The ''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors,'' 52 FR 3788) contained proposed criteria for defining the scope of technical specifications. Later, the ''NRC Final Policy Statement on TS Improvement for Nuclear Power Reactors,'' (58 FR 39132) incorporated lessons learned since publication of the interim policy statement and formed the basis for recent revisions to 10 CFR 50.36. The ''Final Rule'' (60 FR 36953) codified criteria for determining the content of technical specifications. To facilitate the development of standard TS, each reactor vendor owners' group (OG) and the NRC staff developed standard TS. For WNP–2, the Standard Technical Specifications (STS) are NUREG–1434, ''Improved BWR/6 Technical Specifications,'' Revision 1. This document formed the basis for the WNP–2 Improved TS (ITS) conversion. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS, made note of its safety merits, and indicated its support of conversion by operating plants to the STS.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1434 and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1434, portions of the existing TS were also used as the basis for the development of the WNP–2 ITS. Plant specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee and generic matters with General Electric Company and other OGs.

The proposed changes from the existing TS can be grouped into four general categories. These groupings are characterized as relocated requirements, administrative changes, less restrictive changes involving deletion of requirements, and more restrictive changes, and are as follows:

1. Relocated requirements are items which are in the existing WNP–2 TS, but do not meet the criteria set forth in the Final Policy Statement. The Final Policy Statement establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in TS. Relocation of requirements to documents with an established control program allows the TS to be reserved only for those conditions or limitations upon reactor operation which are necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety, thereby focusing the scope of

the TS. In general, the proposed relocation of items from the WNP–2 TS to the Updated Final Safety Analysis Report (UFSAR), appropriate plant specific programs, procedures and ITS Bases follows the guidance of NUREG–1434. Once these items have been relocated to other licensee controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC approved control mechanisms which provide appropriate procedural means to control changes.

2. Administrative changes involve the reformatting and rewording of requirements, consistent with the style of the General Electric STS in NUREG–1434, to make the TS more readily understandable to plant operators and other users. These changes are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Application of a standardized format and style will also help ensure consistency is achieved among specifications. During this reformatting and rewording process, no technical changes (either actual or interpretational) to the TS were made unless they were identified and justified.

3. Less restrictive changes and the deletion of requirements involves portions of the existing specifications which provide information that is descriptive in nature regarding the equipment, systems, actions or surveillances, provide little or no safety benefit, and place an unnecessary burden on the licensee. This information is proposed to be deleted from the specifications and, in some instances, moved to the proposed Bases, UFSAR, or procedures. The removal of descriptive information to the Bases of the TS, UFSAR, or procedures is permissible, because the Bases, UFSAR or procedures will be controlled through a process which utilizes 10 CFR 50.59 and other NRC staff approved control mechanisms. The relaxations of requirements were the result of generic NRC action or other analyses. They have been justified on a case-by-case basis for WNP–2 as described in the safety evaluation to be issued with the license amendment.

4. More restrictive requirements are proposed to be implemented in some areas to impose more stringent requirements than presently exist. These more restrictive requirements are being imposed to be consistent with the General Electric STS. Such changes have been made after ensuring the previously evaluated safety analysis was not affected. Also, other more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the specifications. Examples of more restrictive requirements include: placing a Limiting Condition for Operation (LCO) on plant equipment which is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. Changes which are administrative in nature have been found to have no effect on the technical content of the TS and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operators' control of the plant in normal and accident conditions.

Relocation of requirements to other licensee controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1434 and the Final Policy Statement, and are, therefore, acceptable.

Changes involving more restrictive requirements have been found to enhance plant safety and to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant specific basis were the result of a generic action, or of agreements reached during discussions with the OG and found to be acceptable for WNP–2. Generic relaxations contained in NUREG–1434 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revisions to the TS were found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the amendment request. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for WNP–2.

Agencies and Persons Consulted

In accordance with its stated policy, on August 22, 1996, the Commission consulted with the Washington State official, Mr. R.R. Cowley of the Department of Health, State of Washington Energy Facility Site Evaluation Council, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 8, 1995, as supplemented by letter dated July 9, 1996, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the local public document

room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 18th day of September 1996.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–24411 Filed 9–23–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37689; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

September 16, 1996.

The National Association of Securities Dealers, Inc., on behalf of itself and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, ''Participants'') [1] has submitted to the Commission a request [2] to extend through September 30, 1996, operation of a joint transaction reporting plan (''Plan'') and certain related exemptive relief for trading of Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[3] This notice and order solicits comment on certain related substantive matters identified below, and extends the effectiveness of the Plan through September 30, 1996.

I. Background

The Commission originally approved the Plan on June 26, 1990.[4] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant UTP. Commission approval of operation of the Plan was scheduled to expire September 15, 1996. Recently, the Commission received a revised version of the proposed revenue sharing agreement,[5] the original version of which was discussed and published for comment in the March 18, 1996 Extension Order. In order to provide the Commission with an opportunity to review the revised version of the revenue sharing agreement, the Participants have requested that pilot approval of the Plan be extended through September 30, 1996.

II. Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on September 15, 1996, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data.

III. Comments on the Operation of the Plan

In the January 1995, August 1995, September 1995, October 1995, November 1995, December 13, 1995, December 28, 1995, March 6, 1996, and March 18, 1996 Extension Orders, the Commission solicited, among other things, comment on: (1)Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submission should refer to File No. S7–24–89 and should be submitted by October 15, 1996.

V. Conclusion

The Commission finds that an extension of temporary approval of the operation of the Plan through September 30, 1996, is appropriate and in furtherance of Section 11A of the Act. In order to provide the Commission with an opportunity to review the revised revenue sharing agreement, while ensuring continued operation of the Plan, the Commission believes that it is appropriate to extend pilot approval of the Plan through September 30, 1996. The Commission finds further that extension of the exemptive relief through September 30, 1996, as described above, also is consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

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[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. (''NASD''), and the Chicago Stock Exchange, Inc. (''Chx'') (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] See letter from Robert E. Aber, Vice President, General Counsel and Secretary, Nasdaq, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 16, 1996.

[3] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges (''UTP'') under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of this Section 12(f) requirement, see November 1995 Extension Order, *infra* note 4, at n. 2.

[4] See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (''1990 Approval Order''). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, See also Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (''1994 Extension Order''). See also Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 (''January 1995 Extension Order''), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (''August 1995 Extension Order''), Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (''September 1995 Extension Order''), Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (''October 1995 Extension Order''), Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (''November 1995 Extension Order''), Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (''December 13, 1995 Extension Order''), Securities Exchange Act Release No. 36650 (December 28, 1995), 60 FR 358 (''December 28, 1995 Extension Order''), Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (''March 6, 1996 Extension Order''), and Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (''March 18, 1996 Extension Order'').

[5] See letter from Robert E. Aber, Vice President, General Counsel, and Secretary, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated September 13, 1996.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule aaAa3-2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis and certain exemptive relief through September 30, 1996, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24425 Filed 9–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37697; File No. SR–CBOE–96–45]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Disciplinary Hearing Procedures and Publication of Disciplinary Decisions

September 17, 1996.

I. Introduction

On July 10, 1996,[1] the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder.[3] The rule change amends CBOE Rule 17.6 to adopt certain procedures for hearings in disciplinary cases, and amends CBOE Rule 17.9 to codify CBOE's practice regarding the publication of disciplinary decisions.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a release (Securities Exchange Act Release No. 37500, July 30, 1996) and by publication in the Federal Register (61 FR 41194, August 7, 1996). No comments were received. This order approves the proposed rule change.

II. Description of the Proposal

The rule change approved today amends Rule 17.9 to codify CBOE's practice regarding the publication of disciplinary decisions, and amends Rule 17.6 to adopt the following additional hearing procedures for disciplinary cases: (i) The hearing Panel or the hearing Panel Chairperson will decide any unresolved pre-hearing issues at either party's request; (ii) interlocutory review of hearing Panel decisions is prohibited unless authorized by the hearing Panel; (iii) the hearing Panel will decide the location of the hearing; (iv) the Respondent will be permitted to submit a written request to the hearing Panel asking the Panel to compel the production of non-privileged documents by the Exchange, a member or associated person, or the testimony of a member, associated person or a person within the Exchange's control and; (v) parties must provide a witness list prior to the scheduled hearing.

A. Publication of Decisions

The rule change approved today codifies the Exchange's practice of publishing summaries of Business Conduct Committee hearing decisions in the Exchange's Bulletin after those decisions are final. A decision is considered final after the CBOE Board of Directors (''Board'') concludes its review of the decision, or after the time for such review has expired. Only the parties to the case are permitted access to the decision prior to the time the decision is considered final.[4]

B. Decisions Regarding Pre-hearing Issues

Pursuant to existing CBOE Rule 17.6(b), the parties to a disciplinary hearing are to meet in a pre-hearing conference if the time and the nature of the proceedings permit such a meeting. The purpose of this pre-hearing conference is to clarify and simplify issues, and otherwise expedite the proceedings. The parties should attempt to reach agreement respecting the authenticity of documents, facts not in dispute, and other items which will service to expedite the hearing.

CBOE rules do not presently address how to resolve those pre-hearing issues on which the parties fail to agree. In practice, when such pre-hearing conferences are held, the hearing Panel or the Chairperson of the hearing Panel decides contested issues and any other appropriate pre-hearing issues. The rule change approved today amends Rule 17.6(b) to codify the current practice.

C. Interlocutory Review

Currently, Exchange rules do not address whether, prior to the conclusion of a hearing, a Respondent may request Board review of a decision made by the hearing Panel. The rule change approved today provides that interlocutory Board review of any decision made by the Panel prior to completion of the hearing is generally prohibited. Interlocutory review shall be permitted only if the Panel agrees to such review after determining that the issue is a controlling issue of rule or policy, and that immediate Board review would materially advance the ultimate resolution of the case.

D. Hearing Location

The rule change approved today codifies the process for determining the hearing location. Rule 17.6(b) currently provides that the parties will be given 15 days notice of the time and place of the hearing. Most hearings are held in Chicago at the Exchange's offices; however under some circumstances, a location outside of Chicago is more appropriate. The rule change amends Rule 17.6(b) to provide that the hearing Panel may decide to hold a hearing outside Chicago to accommodate the parties, witnesses, Exchange staff or the Panel members.

E. Hearing Witnesses and Documents

This rule change approved today provides a mechanism for a Respondent to compel testimony or documentary evidence. Rule 17.6(c) presently provides that the hearing Panel may request the production of documentary evidence and witnesses. This rule also provides that no member or person associated with a member shall refuse to furnish relevant testimony documentary materials or other information requested by the Panel.[5] Pursuant to Rule 17.2(b), Exchange staff may require a member or associated person to testify at a hearing, or to produce documents; however, there is currently no procedure permitting a Respondent to compel a member or associated person to testify at a hearing or to produce documents. Additionally, pursuant to Rule 17.4(c), a Respondent has access to non-privileged documents in the Exchange's investigative file. A Respondent does not have the right to compel Exchange

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[1] On July 25, 1996 the Exchange filed Amendment No. 1 to the proposed rule change. Amendment No. 1 is a technical amendment clarifying the language of amended Rule 17.6(b) to include situations where there are more than two parties to a hearing. See Letter from Arthur B. Reinstein, Senior Attorney, Chicago Board Options Exchange to Ethan Corey, Special Counsel, Division of Market Regulation, Commission (July 25, 1996).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] In accordance with CBOE Rule 17.14, decisions are also reported to the Central Registration Depository prior to the time the decision is considered final.

[5] The proposed rule change would move the language regarding the Panel's power to request the production of documentary evidence and witnesses from Rule 17.6 subsection (c) to the proposed subsection (d) so that the topics of documents and witnesses are addressed in one subsection of Rule 17.6. This language has been slightly revised to clarify that the Panel does not have to wait until during the hearing to make its request.

staff to produce documents not in the investigative file, nor does a Respondent have the right to require Exchange employees to appear as witnesses at a hearing.

The rule change provides that if the Exchange, a member, or a person associated with a member will not voluntarily produce non-privileged documents or hearing witnesses the Respondent has requested, the Respondent may submit a written request to the Panel asking the Panel to enter an order compelling the production of such non-privileged documents, or compelling the testimony of the member, associated person, or a person within the Exchange's control. In order to obtain such an order, a Respondent must demonstrate that the witnesses or documents requested are relevant and material to the Respondent's case. Exchange staff has the opportunity to argue why no such order should be issued. In making a decision whether to issue the requested order, the hearing Panel would have to weigh the probative value of the evidence against considerations such as undue delay, waste of time, confusion, unfair prejudice, or needless presentation of cumulative evidence. The hearing Panel could require the Respondent who requested the order to pay the witness's travel expenses or other costs of complying with the order.

F. Witness List

Rule 17.6(b) presently provides that no less than five business days in advance of a hearing, each party will furnish the Panel and the other parties copies of all documentary evidence such party intends to present at a hearing. The rule change approved today requires the parties to provide a list of witnesses they intend to present at a hearing.

III. Conclusion

The Commission finds that the rule change is consistent with the provisions of Section 6(b)(7) of the Act. The rule change is designed to improve the speed, fairness, and efficiency of disciplinary hearings, thereby promoting a fair procedure for the disciplining of members and persons associated with members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–CBOE–96–45 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[6] 17 CFR 200.30–3(a)(12.

Margaret H. McFarland,

Deputy Director.

[FR Doc. 96–24426 Filed 9–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37691; File No. SR–Phlx–96–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of FLEX Index and FLEX Equity Options

September 17, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 21, 1996, the Philadelphia Stock Exchange, Inc., (''Phlx'' or Exchange'') filed with the Securities and Exchange Commission (''Sec'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to adopt Rule 1079, Index and Equity FLEX™ [1] Options, to govern the trading of customized or flexible (''FLEX'') index and equity options on the Exchange. Specifically, the Exchange proposes to trade FLEX options on the following two broad-based (market) index options currently traded on the Phlx: Value Line Composite Index (''VLE'') and National Over-the-Counter Index (''XOC''). The Phlx also proposes to trade FLEX industry (narrow-based) index options pursuant to the proposed rule on the following four industry index options currently traded on the Phlx: Bank Index (''BKX''), Gold/Silver Index (''XAU''), Semiconductor Index (''SOX'') and Utility Index (''UTY''). In addition, the Phlx is proposing to trade equity FLEX options on securities which are options-eligible pursuant to Rule 1009, with the Options Committee designating the specific issues.

Proposed Rule 1079 contains the characteristics, trading procedure and other provisions applicable to trading FLEX options. All FLEX options would trade in the trading crowd of the corresponding non-FLEX option. The Exchange notes that the Automated Options Market (''AUTOM'') system will not be available for Phlx options. Proposed Rule 1079 also states that although FLEX options are generally subject to the rules in the options section, to the extent that the provisions of Rule 1079 are inconsistent with other applicable Exchange rules, Rule 1079 takes precedence with respect to FLEX options.

Because FLEX options would not be continuously quoted, nor are series pre-established, the variable terms of FLEX options shall be established by the following process. In order to initiate a transaction, a Requesting Member submits a Request-for-Quote (''RFQ'') to the appropriate trading crowd, announcing the terms of the quote sought. The characteristics, including which terms and to what degree customization will be available, are outlined in Rule 1079(a).[2] For example, the exercise strike price respecting index FLEX options can be specified at the time the quote is requested in terms of a specific index value number (*e.g.*, 553.5), a method for fixing such number (*e.g.*, 10 basis points over the index value at a certain time, or with the future trading at a certain price), or a percentage of index value calculated as of the open or close of trading on the Exchange on the trade date (*e.g.*, 5% above the close). Similarly, respecting equity FLEX options, the exercise strike price can be specified in terms of a specific dollar amount rounded to the nearest one-eighth of a dollar, or a percentage of the underlying security rounded to the nearest tick.

The exercise style can be either American or European,[3] regardless of the exercise style of the listed option.[4] The expiration date can also be customized, specifying any business day (non-holiday)—any month, day and year within five years for index flex options and three years for equity FLEX options. However, FLEX options may not expire on any day that falls on, or within two business days of (prior or subsequent to) a mid-month expiration day for a non-FLEX option on the same underlying index or security (other than a quarterly expiring index option). In addition, a

[1] The term ''FLEX'' is a trademark of the Chicago Board Options Exchange, Inc. (''CBOE'').

[2] The Exchange notes that Rule 1079 generally parallels the provisions of Rule 1069 governing foreign currency options.

[3] An American style option may be exercised at any time up to its expiration, while a European style option can only be exercised on its expiration day. See Phlx Rule 1000(b)(35).

[4] European style equity FLEX options may be adjusted to require the delivery upon exercise of a fixed amount of cash. See proposed amendments to the Options Clearing Corporation (''OCC'') By-Law, Article IV, Section 11, Interpretation and Policy .08 in Securities Exchange Act Release No. 37318 (June 18, 1996) (SR–OCC–96–03).

new series cannot be opened on the day of exercise.

With respect to the minimum size of market index FLEX option quotes, if there is no open interest in the particular series when an RFQ is submitted, the minimum value size of an RFQ is $10 million underlying equivalent value; if there is open interest, the minimum value size of an RFQ is $1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less. The underlying equivalent value is defined as the aggregate underlying value of an index FLEX option (index multiplier times the current index value) multiplied by the number of index FLEX options. The minimum value size for a responsive quote in market index FLEX options is $1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less.

With respect to the minimum size of industry index FLEX option quotes, if there is no open interest in the particular series when an RFQ is submitted, the minimum value size of an RFQ is $5 million underlying equivalent value; this amount is one-half of the minimum size proposed by the Phlx and currently in place on other options exchanges for flexible broad-based index options. Where there is open interest, the minimum value size of an RFQ is $1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less. The minimum value size for a responsive quote is $1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less.

With respect to the minimum size of equity FLEX option quotes, if there is no open interest in the particular series when an RFQ is submitted, the minimum value size of an RFQ is 250 contracts; if there is open interest, the minimum value size of an RFQ is 100 contracts, or the remaining size on a closing transaction, whichever is less. The minimum value size for a responsive quote in equity FLEX options is 100 contracts, or the remaining size on a closing transaction, whichever is less.

However, assigned Registered Options Traders (''ROTs'') and an assigned Specialist are required to respond to each RFQ with a certain minimum size. Respecting broad-based index FLEX options, assigned ROTs and the assigned Specialist are each required to respond with at least $10 million underlying equivalent value or the dollar amount requested in the RFQ, whichever is less. Respecting narrow-based index FLEX options, assigned ROTs and an assigned Specialist are each required to respond with at least $5 million underlying equivalent value or the dollar amount requested in the RFQ, whichever is less. Respecting equity FLEX options, assigned ROTs and the assigned Specialist are each required to respond with a market of at least 250 contracts or the dollar amount requested in the RFQ, whichever is less.

The settlement value for index FLEX options may be specified as the value reported at the: (i) close of trading (P.M.-settled), (ii) opening (A.M.-settled) of trading on the Exchange, or (iii) as an average over a specified period of time, within parameters established by the Exchange. For example, the third category includes the average of the index's opening and closing settlement values on the expiration date, the average of the index's high and low values on the expiration date, or the average of the index's opening, closing, high and low values on the expiration date. However, American style index FLEX options exercised prior to the expiration date can only settle based on the closing value on the exercise date. Index FLEX options may be designated for settlement in U.S. dollars, British pounds, Canadian dollars, Deutsche marks, European Currency Units, French francs, Japanese yen or Swiss francs. With respect to the settlement process applicable to equity FLEX options, exercise settlement shall be by physical delivery of the underlying security pursuant to Rule 1044. Also, equity FLEX options will be subject to the exercise-by-exception procedures of OCC.[5]

With respect to the quote format of FLEX options, a bid and/or offer in the form of a specific dollar amount reflected as a fractional price (*e.g,* ⅛, ¼), or a percentage of the underlying security or underlying equivalent value, rounded to the nearest minimum tick shall be acceptable. The option type may be a put, call or hedge order.[6]

The quoting and trading procedure for FLEX options, beginning with RFQ, is enumerated in Rule 1079(b). Submitting an RFO in the appropriate trading crowd is the first step in quoting FLEX options. The Requesting Member must announce and submit an RFQ ticket containing the following: (1) Underlying index or security, (2) type, (3) exercise style, (4) expiration date, (5) exercise price, and (6) settlement value (A.M. or P.M.) and currency for index FLEX options. On receipt of an RFQ in proper form, the assigned Specialist, or if none, the Requesting Member shall cause the terms of the RFQ to be disseminated as an administrative text message through the Options Price Reporting Authority (''OPRA'').[7] RFQs, responsive quotes and completed trades will be promptly reported to OPRA and disseminated as an administrative text message.

Following the RFQ announcement, a preset response time will begin, during which members may provide responsive quotes. As stated in paragraph (b)(2), the response time, between two and 15 minutes, will be determined by the Options Committee, which may depend on the complexity of the RFQ.[8] During the response time, qualified members may provide responsive quotes to the RFQ, which may be entered, modified or withdrawn during such response time.

At the end of the response time, the assigned Specialist, or if none, the Requesting Member shall determine the best bid and offer (''BBO''), in accordance with Rule 1014, disseminating such market with reference to the corresponding RFQ. However, where two or more bids/offers are at parity, priority will be afforded to bids/offers submitted by assigned ROTs and the assigned Specialist.

Following the determination of the BBO, a BBO Improvement Interval may be invoked if the Requesting Member rejects the BBO or the BBO is for less than the entire size requested. The BBO Improvement Interval is a two minute time period during which the BBO may be matched or improved. As a result of the Improvement Interval, a new BBO is established, which is disseminated with reference to the corresponding RFQ. An assigned ROT and the assigned Specialist who responded with a market during the response time may immediately join the new BBO.

A trade in FLEX options cannot be executed until the end of the response time or BBO Improvement Interval. Once the response time or BBO

[5] OCC Rule 805 provides for automatic exercise of in-the-money options at expiration without the submission of an exercise notice to OCC if the price of the security underlying the option is at or above a certain price (for calls) or at or below a certain price (for puts); and the non-exercise of an option at expiration if the price of the security underlying the option does not satisfy such price levels.

[6] See Rules 1000(b)(7) and 1066(f).

[7] Operationally, the Requesting Member provides this information to a key puncher, who enters it into Exchange systems.

[8] Initially, the Options Committee has established a response time of 10 minutes. Although this Committee will be authorized to change the response time within the permissible range, any such change will be preceded by notice to the Exchange membership.

Improvement Interval ends, the Requesting Member is given the first opportunity to trade on the market by voicing a bid/offer in the trading crowd. The Requesting Member has no obligation to accept any bid or offer for a FLEX option. If the Requesting Member rejects the BBO or the BBO size exceeds the entire size requested, another member may accept such BBO or the unfilled balance of the BBO. Acceptance of a bid/offer creates a binding contract under Exchange rules.

Once the BBO is established, it remains open that trading day. Because the market remains open, a member may re-quote the market without submitting an additional RFQ. An assigned ROT or assigned Specialist who responded may immediately join that market, thus matching for parity purposes. However, markets remaining open are not firm, as defined in Rule 1033(a).

Further, there will be a limit order book for FLEX options. The Specialist in the listed non-FLEX equity or index option, whether or not assigned in FLEX options, must accept FLEX orders on the FLEX book. Customers day limit orders may be placed on the index FLEX or equity FLEX option book. Booked orders expire at the end of each trading day. The limit price and size must be written on the RFQ ticket and submitted for dissemination. In order to trade with the book, an executing member must quote the market and announce the trade. The executing member has priority over other members, including assigned ROTs and the assigned Specialist, seeking to trade with the booked order.

Generally, on the Phlx options floor, a cross may take place in accordance with Rule 1064. With respect to FLEX options, after the BBO has been determined, the Requesting Member intending to cross must bid (or offer) at or better than the BBO. Whenever a Requesting Member intends to cross, after the BBO is determined, with or without a BBO Improvement Interval, the Requesting Member must announce an intention to cross and bid and offer at or better than the BBO. If the Requesting Member's bid/offer is at the BBO, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. For instance, if there are two members on parity at the BBO, the Requesting Member and an assigned ROT, the Requesting Member is entitled to receive 50% of the contra-side contracts, which is a fair split, not just 25%. The remainder of the contra-side is split in accordance with the parity/priority provision set forth in proposed Rule 1079(b)(3).

If the Requesting Member's bid/offer improves the existing BBO, an assigned ROT or assigned Specialist who responded with a market during the response time or BBO Improvement Interval, may immediately join the Requesting Member's improved bid or offer, thus matching for parity purposes. However, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. The remainder of the contra-side is split in accordance with the parity/priority provision set forth in proposed Rule 1079(b)(3).

The Exchange notes that an ROT and Specialist may trade FLEX options as an assigned ROT/Specialist or as a non-assigned ROT/Specialist. ROTs and Specialists must apply on the appropriate Exchange form to be assigned in FLEX options. An assigned ROT or assigned Specialist may choose to be assigned in a particular FLEX option, but must respond with a market respecting any FLEX option upon request by a Floor Official.

Assigned ROTs and the assigned Specialist will be subject to certain obligations respecting the trading of FLEX options. For example, the affirmative and negative market making obligations of Rule 1014(c) apply. Further, assigned ROTs and the assigned Specialist are required by paragraph (b)(ii) to respond with a market of the minimum size.[9] At least two ROTs and/or a Specialist shall be assigned to each FLEX option. Because of these obligations, assigned ROTs and the assigned Specialist are afforded priority over other bids/offers at parity during the response time. Further, assigned ROTs and the assigned Specialist who responded with a market during the response time may join a new bid/offer voiced during the Improvement Interval, provided they do so immediately. Enabling assigned ROTs and the assigned Specialist to join such new bid/offer affords them parity at that new BBO.

There will be no trading rotations in FLEX options, either at the opening or at the close of trading. Unless otherwise determined by the Exchange, transactions in FLEX options may be effected each trading day from 10:00 A.M. to: (1) 4:15 P.M. respecting market index FLEX options; and (2) 4:10 P.M. respecting industry index FLEX and equity FLEX options.

[9] However, assigned ROTs and assigned Specialists are not required to provide continuous quotes or markets at a certain minimum bid-ask differential (quote spread parameter).

Generally, FLEX option positions are not taken into account when calculating position limits for non-FLEX options on the same index.[10] Accordingly, broad-based index FLEX options will be subject to a separate position limit of 200,000 contracts on the same side of the market. Narrow-based index FLEX options will be subject to a position limit of four times the current position limit—24,000, 36,000 or 48,000 contracts on the same side of the market. Respecting equity FLEX options, the position limit will be three times the current limit applicable to the listed equity option—75,000, 60,000, 31,500, 22,500 or 13,500 contracts on the same side of the market. The Exchange notes that both the market index FLEX option limit as well as the equity FLEX option limits are the same as the provisions of other exchanges.[11] The Exchange also notes that because the market index FLEX option limit is eight times the non-FLEX limit and the equity FLEX option limit is three times the non-FLEX limit, the Exchange believes that four times the non-FLEX limit is an appropriate limit for industry index FLEX options.

A separate exercise limit would also apply, equivalent to the applicable position limit. The minimum exercise size would be the lesser of $1 million or the remaining size of the position respecting index options, and the lesser of 100 contracts or the remaining size of the position respecting equity options.

The proposal requires any ROT and Specialist to submit a Letter of Guarantee[12] issued by a clearing member organization, specifically accepting financial responsibility for all FLEX option transactions made by such person. Moreover, a minimum of $100,000 in net liquid assets is required to be maintained by assigned ROTs and assigned Specialists. Floor Brokers must maintain a minimum of $50,000 in net capital to qualify to trade FLEX options. Assigned ROTs, the assigned Specialist and Floor Brokers must immediately notify the Exchange's Examinations Department upon failure to be in compliance with these requirements.

The Exchange also proposes to adopt Floor Procedure Advice (''Advice'') F–28, Trading Index and Equity FLEX Options, to parallel most of the

[10] However, positions in P.M.-settled customized index options shall be aggregated with positions in quarterly expiring options (''QIXs'') on the same index, *if* the customized option expires at the close of trading on or within two business days of the last trading day in a quarter. The Exchange is authorized to trade QIXs pursuant to Rule 1101A(b)(iv), although none currently trade.

[11] See e.g., CBOE Rule 24A.7(b).

[12] See Phlx Rule 703.

provisions of Rule 1079(b), including those pertaining to requesting quotations, response, determining the BBO, the BBO Improvement Interval, executing a trade and crossing. Advice F–28 is not proposed to contain a fine schedule, such that it does not require inclusion in the Exchange's minor rule violation enforcement and reporting plan. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to trade options with flexible characteristics in an exchange auction environment. The Phlx is specifically proposing to trade flexible index and equity options, with several different contract specifications available for customization, including the exercise price, exercise style, expiration date and method for determining the exercise settlement value.

The Exchange believes that flexible options will provide important trading opportunities, which may currently be unavailable due to pre-set expiration dates, exercise prices and exercise styles. For example, although the VLE is European style, a flexible VLE contract could be crafted pursuant to Rule 1079 as an American style option. Thus, customization offers new trading potential respecting existing securities.

Currently, there exists an active over-the-counter (''OTC'') market in options, where basic option features can be customized. Customizing option terms enables an investor to more closely tailor investment strategies to option products. These customized options are often traded by institutional investors with specific trading needs. In response, the Exchange seeks to trade FLEX options in an exchange auction market environment, with the Options Clearing Corporation (''OCC'') as issuer and guarantor.[13] Thus, FLEX options are structured with a minimum size reflecting the larger-sized trades of these institutional users.[14]

The proposed rule, Rule 1079, is based upon the Exchange's Rule 1069, Customized Foreign Currency Options, and Exchange experience with trading this product since November, 1994.[15] Generally, FLEX options shall be traded in accordance with many existing equity option and index option rules; however, Rule 1079 contains certain new trading procedures unique to FLEX options. In addition, the proposal is similar to the rule and proposals by other exchanges respecting flexible options.[16]

Several of the proposed provisions are intended to ensure orderly trading. For example, FLEX options will begin trading at 10:00 A.M., one half hour after the normal opening of options trading on the exchange, in order to limit the burden on the trading crowd. Industry index and equity FLEX options will trade until 4:10 P.M., to correspond to the non-FLEX option, similar to market index FLEX options, which would trade until 4:15 P.M. The Exchange may establish other trading times, including coordinating with FLEX trading hours on other exchanges and reflecting new trading hours for non-FLEX options.

As another example, the RFQ process, which allows a set period of time for bids and offers to be determined, is also designed to create an orderly trading environment, recognizing that greater variation in option terms requires sufficient time to respond with a quote. The response time and the BBO Improvement Interval should thus promote depth and liquidity as well.

In order to provide adequate liquidity in FLEX options, two assigned members, whether ROTs or Specialists, are required for each FLEX option, and must be present for a trade to occur.[17] In addition, the minimum size requirements are intended to attract depth and liquidity to FLEX options.

Other FLEX provisions are intended to minimize the market impact of this product. For one, the expiration date may not fall on, or within two business days before or after the normal mid-month Friday expiration for options. Because the expiration date of FLEX options may not correspond to a non-FLEX expiration, FLEX options should not affect the market for the underlying security at the same time, thereby not placing added pressure on that security at the same time. This, in turn, minimizes the impact of FLEX options on the marketplace.

Second, position and exercise limits will apply to FLEX options, although separate from those applicable to non-FLEX options. The Exchange believes that separate, higher limits and non-aggregation are appropriate for FLEX options, which are intended to compete with OTC options that are not subject to such limits. The higher limits reflect the institutional nature and resulting larger size of FLEX options.

In order to enhance customer protection, certain financial standards will apply, including a capital requirement and a Letter of Guarantee from a clearing firm respecting FLEX options trading. The existence of separate position and exercise limits serves a customer protection function as well, by reducing systemic risk.

Not only will FLEX options combine variable terms with an auction marketplace and OCC guarantee, but FLEX options will also offer transparency of quotes and trades, because the proposal requires prompt and complete quotation and transaction reporting. Although flexible options will not be continuously quoted, once an RFQ is received, its terms, as well as the responding quotes, will be disseminated by Exchange systems. The terms of any resulting trade will also be disseminated. Specifically, the assigned Specialist, or if none, the Requesting Member will ensure immediate dissemination to OPRA, which will, in turn, disseminate the information to subscribing vendors in the form of an administrative test message.

The Exchange expects to implement a separate computer system to handle index and equity FLEX options, similar to the system utilized for customized foreign currency options. The Exchange expects that initially FLEX options will

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[13] For a discussion of clearance and settlement procedure for FLEX options, see Securities Exchange Act Release No. 37318 (June 18, 1996) (SR–OCC–96–03). For example, OCC may depart from regular expiration date procedures and deadlines in the case of equity FLEX options, pursuant to OCC Rule 805, Interpretation and Policy .03.

[14] The Exchange notes that the Commission has previously designated index and equity FLEX options as standardized options for the purposes of the options disclosure framework established under Rule 9b–1 of the Act. See Securities Exchange Act Release No. 31910 (February 23, 1993).

[15] Securities Exchange Act Release No. 34925 (November 1, 1994) (SR–Phlx–94–18).

[16] See, *e.g.*, CBOE Rules 24A. 1—24A.17; Amex Rules, Section 15, Rules 900G, et. seq.; and PSE Rules 8.100—8.115.

[17] See Floor Procedure Advises A–10, Specialist Trading with Book, and C–1, Ascertaining the Presence of ROTs in a Trading crowd, which require that, in addition to the Specialist, a ROT be present during a transaction.

be entered into this system at a limited number of locations on the trading floor.

The Exchange proposes to utilize a limit order book for FLEX options. The purpose of the book is to accommodate customers who have specified a limit price for a FLEX option order that is away from the market established during the RFQ process. The order book will be limited to customer day limit order, which must be accepted by the Specialist, whether or not that Specialist is assigned in FLEX options. As such, the Specialist is responsible for the execution of booked orders. The Exchange is requiring all Specialists to maintain a FLEX book for consistency and to prevent investor confusion. The Exchange believes that the FLEX order book should serve as a useful tool for customers, as does the current limit order book respecting non-FLEX options. With respect to booked orders for the same FLEX option (identical terms), Rule 1014 will apply to determine priority and parity among such orders.[18] When trading with a booked order, a member, after re-quoting the market, receives priority over other members, including assigned ROTs and the assigned Specialist. This provision is intended to encourage members to step forward to trade with booked orders, recognizing that any member, including an assigned ROT or assigned Specialist, could have done so. It also encourages members to monitor changes that may render a booked limit order executable, similar to non-FLEX options.

The Exchange also proposes that the markets resulting from an RFQ remain open that trading day, as opposed to expiring immediately. As with non-FLEX options, before attempting to trade with an existing BBO, the market should be re-quoted. The variable terms integral to this product combined with the larger minimum size aimed at institutional trading needs render it difficult to sustain a firm quote in a constantly changing market. Thus, open markets are not firm, not subject to the guarantees of Rule 1033(a), and must be re-quoted. The advantage of markets remaining open is that such a re-quote does not require the submission of a new RFQ, thereby avoiding the delay of a new response time. Because an option that was quoted earlier in the trading day does not require a new response time, the Exchange believes that it would be burdensome to repeat the RFQ process. Instead, markets remaining open streamlines FLEX trading and eliminates unnecessary delays. Any time a market is re-quoted that day, the new BBO and any resulting trade are disseminated with reference to the original RFQ.

Unlike the provisions of other exchanges,[19] discretionary transactions would not be permitted in FLEX index and equity options. Thus, the existing provisions of Rule 1065 will apply to prohibit such transactions. The Exchange also notes that there may not be a specialist in FLEX options. Only the assigned Specialist in the non-FLEX (listed) option may apply to be an assigned Specialist in the FLEX option, but is not required to do so in order to participate. The current responsibilities of a Specialist to determine a market based on the bids and offers voiced as well as to disseminate bids/offers and trades may be handled by the Requesting Member, where there is no assigned Specialist in that FLEX option. If a trade occurs where the Requesting Member is not a participant and there is no assigned Specialist, the responsibility to submit the trade falls upon the seller or largest participant, in accordance with existing trading procedure.[20] The Exchange has also determined that FLEX options will trade in the crowd of the non-FLEX option in order to facilitate participation by assigned ROTs who will most likely be located in that crowd. Encouraging market making activity, whether or not assigned, should foster liquidity in FLEX options.

Further, the proposed crossing procedure differs from that of other exchanges.[21] A guaranteed minimum right of participation of 25%, or a fair split, whichever is greater, applies to crosses in both index and equity FLEX options. The purpose of the split is to attract interest in Exchange-traded FLEX options by guaranteeing members who bring FLEX orders to the Phlx a part of the contra-side participation on that trade when matching or improving the BBO. Nevertheless, this procedure prevents other market participants who are obligated to provide markets, from being excluded from FLEX option crosses. This, in turn, should prevent assigned ROTs and assigned Specialists from being discouraged from assuming the obligations of FLEX options assignment. Thus, the Phlx believes that this crossing procedure should promote deep and liquid markets for FLEX options.

In determining the BBO after the response time ends, where two or more bids/offers are at parity, priority is afforded to bids/offers submitted by assigned ROTs or the assigned Specialist. In addition, after the BBO Improvement Interval, an assigned ROT or assigned Specialist who responded with a market during the response time, even though that market did not constitute the BBO and even though such trader may not have responded during the Improvement Interval, may immediately join the new BBO. These procedures affording to assigned traders priority during the response time and parity during the Improvement Interval are intended to attract market maker interest, and thus liquidity, to FLEX options trading. In summary, the purpose of these provisions is to encourage assignment and reward those who actively make markets.

In view of the obligations of assigned ROTs and Specialists to make a market of a certain minimum size as well as that each FLEX option traded must have at least two assigned ROTs or assigned Specialists, the Exchange believes this ability to match is critical to the success of the product. The Exchange notes that the priority that an assigned ROT or assigned Specialist has over non-assigned market participants in voicing bids/offers and determining the BBO is similar to that of other exchanges.[22] This priority is limited to voicing bids/offers to establish a BBO; for purposes of joining bids/offers during the Improvement Interval or crossing procedure, parity, not priority, is afforded to assigned ROTs and the assigned Specialist. Priority for assigned ROTs and the assigned Specialist is also based on the need to offset the obligations of assigned ROTs and the assigned Specialist.

The Exchange notes that non-assigned ROTs and Specialists may trade FLEX options, but without the obligations or concomitant advantages of assignment. The Exchange also notes that trading in FLEX options will count toward the in-person and in-assigned trading requirements of Rule 1014 and Advice B–3. In addition, the purpose of adopting new Advice F–28 is to incorporate it into the Floor Procedure

[18] The Exchange notes that although Rule 1014's principles of price and time priority, as well as simultaneous bids/offers at parity, apply to FLEX options trading, the enhanced specialist participation of sub-paragraphs (g) (ii) and (iii) are not applicable to FLEX options.

[19] See *e.g.*, CBOE Rule 24A.6.

[20] See Floor Procedure Advice F–2, Time Stamping, Matching and Access to Matched Trades.

[21] Pursuant to CBOE Rule 24A.5(e)(iii), Submitting Members representing index FLEX crosses, after indicating an intention to cross or act as principal, are entitled to a one-half split on the BBO and a two-thirds split if improving the BBO. With respect to equity FLEX option crosses, there is a right to a 25% split on both the CBOE and the Amex, and on the PSE is improving the BBO. See *e.g.,* Securities Exchange Act Release No. 37051 (March 29, 1996) (SR–CBOE–96–20).

[22] See *e.g.*, CBOE Rule 24A.5(e)(i) and (ii).

Advice Handbook for easy reference on the trading floor.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, in creating a FLEX options trading procedure in proposed Rule 1079 to enable the trading of flexible index and equity options. The Exchange believes that the proposed trading procedure, crafted in consideration of the complexity of variable terms and the larger sizes reflective of institutional users, should ensure that just and equitable principles of trade govern FLEX options trading. The Exchange also believes that the financial requirements and assigned ROT and assigned Specialist obligations should promote liquidity, as well as the protection of investors trading FLEX options. Furthermore, the customization of option features and terms should enable investors to better manage trading and investment risk as well as more closely tailor Exchange-traded options to their specific investment strategies and objectives. Thus, FLEX Options unite certain attributes of negotiated transactions with the many benefits of an exchange auction marketplace, including transparency and OCC as guarantor. Because the proposed procedure is designed to minimize market impact and contains important customer protection provisions, it should prevent fraudulent and manipulative acts and practices. The Exchange also believes that the proposal is consistent with Section 11A, because FLEX options enable the Exchange to compete fairly with other exchanges as well as the OTC market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–38 and should be submitted by October 15, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24367 Filed 9–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Advisers Act Release No. 1579; 803–102]

Technology Funding Partners III, L.P., et al.; Notice of Application

September 17, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Advisers Act of 1940 (the ''Advisers Act'').

APPLICANTS: Technology Fund Partners III, L.P. (''P3''); Technology Funding Venture Partners IV, An Aggressive Growth Fund, L.P. (''VP4''); Technology Funding Venture Partners V, An Aggressive Growth Fund L.P. (''VP5''); Technology Funding Medical Partners I, L.P. (''MP1''); Technology Funding Inc. (''TFI''); and Technology Funding Ltd. (''TFL'').

RELEVANT ADVISERS ACT SECTIONS: Order requested under section 206A of the Advisers Act for an exemption from section 205(a)(1) of the Advisers Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain business development companies (''BDCs'') to make in-kind distributions of portfolio securities and deem gains or losses on such securities to be realized upon such distributions to partners of such BDCs. The order would apply only to in-kind distributions of portfolio securities for which market quotations are available and are traded publicly on any nationally recognized exchange or market (''Exchange Traded Securities'').

FILING DATE: The application was filed on July 15, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 15, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 2000 Alameda de las Pulgas, San Mateo, California 94403.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. P3, VP4, VP5, and MP1 are Delaware limited partnerships registered as BDCs under the Investment Company Act of 1940 (the ''Act''). Each

[23] 17 CFR 200.30–3(a)(12).

BDC's investment objective is to seek long-term capital appreciation by making venture capital investments. Each of the BDCs has five general partners consisting of three individuals (the ''Individual General Partners''), TFL and TFI (the ''Managing General Partners'' and together with the Individual General Partners, the ''Partners''). No Individual General Partner of one BDC serves as an Individual General Partner of any other BDC. Each of the BDCs has received an exemptive order determining that each Individual General Partner is not an ''Interested person'' of the relevant BDC within the meaning of section 2(a)(19) of the Act.[1]

2. TFL is a California limited partnership that is registered as an investment adviser under the Advisers Act. TFI is a California corporation that also is registered as an investment adviser under the advisers Act. TFI is a wholly-owned subsidiary of TFL.

3. With the exception of P3 and VP4, which are managed by all their General Partners, the BDCs are managed by their respective Individual General partner, who has complete and exclusive authority to manage and control them. The Managing General Partners are charged with certain responsibilities pursuant to the BDCs' respective partnership agreements (the ''Partnership Agreements''). The Managing General partners have the authority to determine and manage the BDCs' respective venture capital investments and performance of the day-to-day operations, including the investment and realization of investments and the making of distributions by the Funds, subject to the supervision of the Individual General Partners. The Individual General Partners perform general fiduciary duties including conducting: management arrangements of the BDCs; custody arrangements for portfolio securities; and transactions with affiliated persons.

4. Allocation of profits of the BDCs to their Partners are made in accordance with the terms of the Partnership Agreements that provide that net profit will be allocated: (a) first, to those Partners with deficit capital account balances until such deficits have been eliminated; (b) second, to Partners that had been allocated net losses and sales commissions in the amounts that such net losses and sales commissions had been previously allocated to them; and (c) then, 20% to the Managing General Partners, 75% to the limited partners generally in proportion to the number of units they hold, and 5% to the limited partners in proportion to the number of units held by each limited partner multiplied by the number of half-months the limited partner held such units from his admission to the partnership until the closing date (''Unit Months'') bears to the total number of units multiplied by the total number of Unit Months.

5. Net losses of each BDC generally will be allocated in the proportion that net profit is allocated under paragraph 4(c) above and then 99% to the limited partners and 1% to the general partners. Each Partnership Agreement provides for a special allocation to the Managing General Partners of net loss otherwise allocable to a limited partner that exceeds the positive balance in the capital account of such limited partner and a subsequent allocation of net profit in the same amount.

6. Cash and securities ''available for distribution'' means all partnership cash from whatever sources derived (less such reserves as the Individual General Partners or management committee shall deem reasonable for the partnership's business), plus any securities held by the BDC that the Individual General Partners deem available for distribution. In general, cash and securities available for distribution are distributed 99% to the limited partners and 1% to the general partners, until such time as the amount of cash and the value of all securities distributed to all limited partners and thereafter are distributed in proportion to Partners' capital accounts.

7. Under each Partnership Agreement, securities distributed in-kind to Partners during the life of any BDC are treated as if sold at their appraised value. Securities the value of which cannot be appraised on the basis of either available market quotations or third party transactions involving actual transactions or actual firm offers by investors who are not affiliates of the relevant BDC, are requested to be valued by an appraisal carried out by two independent appraisers. In the event the two independent appraisers are unable to agree upon a valuation, they are required jointly to appoint a third independent appraiser whose decision will be final and binding.

8. Notwithstanding the above, no in-kind distributions have previously been made by any of the BDCs. This is because in the Prior Orders, applicants agreed to obtain an exemption pursuant to section 260A of the Advisers Act permitting the BDC's to deem gains or losses to be realized upon in-kind distributions of securities before such distributions are made, or obtain a favorable response to a no-action request indicating that an exemption was not necessary.

Applicants' Legal Analysis

1. Applicants request an order under sections 206A of the Advisers Act exempting applicants from Section 205(a)(1) of the Advisers Act. The requested order would permit the BDCs to make in-kind distributions of portfolio securities and deem gains or losses on such securities to be realized upon such distributions to the Partners. The order would apply only to in-kind distributions of portfolio securities for which market quotations are available and are Exchange Traded Securities.

2. Section 205(a)(1) of the Advisers Act prohibits any investment adviser registered under the Advisers Act from entering into a contract which provides for compensation based upon ''a share of capital gains or capital appreciation of the funds or any portions of the funds of the client,'' commonly referred to as a ''performance fee.''

3. Section 205(b)(3) provides, in pertinent part, that the performance fee prohibitions of section 205(a)(1) are not applicable to advisory contracts between an investment adviser and a BDC if, among other things, the compensation provided for in such contract does not exceed 20% of the realized capital gains upon the funds of the BDC over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation.

4. Applicants believe that the proposed in-kind redemptions conform with section 205(b)(3). Section 205(b)(3), however, does not comtemplate, on its face, the procedures set forth in the Partnership Agreements whereby unrealized gains or losses are deemed realized under certain conditions for purposes of the compensation formula. Specifically, the Partnership Agreements provide that unrealized gains or losses will be deemed to be realized with respect to distributions in-kind both during the life of the BDCs and upon their termination.

[1] *Technology Fund Partners III, L.P.*, Investment Company Act Release Nos. 15724 (notice) (May 8, 1987) and 15764 (June 2, 1987); *Technology Funding Venture Partners IV, An Aggressive Growth Fund, L.P.*, Investment Company Act Release Nos. 16596 (notice) (Oct. 14, 1988) and 16626 (order) (Nov. 8, 1988); *Technology Funding Venture Partners V, An Aggressive Growth Fund L.P.*, Investment Company Act Release Nos. 17370 (notice) (Mar. 12, 1990) and 17422 (order) (Apr. 11, 1990); and *Technology Funding Medical Partners I, L.P.*, Investment Company Act Release Nos. 19183 (notice) (Dec. 28, 1992) and 19229 (order) (Jan. 25, 1993) (collectively, the ''Prior Orders'').

5. Section 206A of the Advisers Act provides that the SEC may exempt any person or transaction from any provision of the Advisers Act if and to the extent that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

6. Applicants argue that to the extent section 205(b)(3) requires a performance fee to be based on realized capital gains, the proposal is consistent with the statutory purpose. Once the in-kind distribution is made, the Managing General Partner will no longer have any control over the investment in the subject securities. The Partners will have the exclusive ability to liquidate such investments. In addition, applicants assert that there will be no concern over the proper valuation of the securities upon which the fee is based because applicants request relief only to cover in-kind distributions of Exchange Traded Securities.

7. Applicants submit that the requested relief satisfies the section 206A standards. First, the distributed securities would be freely transferable, which would enable the Partners to determine whether to hold or sell the distributed securities. In such circumstances, Partners will not forfeit any particular management expertise, since TFL and TFI have not held themselves out as possessing particular experience in managing a portfolio of Exchange Traded Securities. Second, the distributions of portfolio securities will not constitute a taxable event, so the Partners will, in determining whether to hold or sell the securities, control the timing of realization of capital gains. Third, in-kind distributions on termination are an efficient way of winding up the BDC's affairs and avoiding premature dispositions of portfolio investments.

Applicants' Conditions

Applicant agree that the order granting the requested relief shall be subject to the following conditions:

1. The relief will only apply to the distribution in-kind by the BDCs of Exchange Traded Securities.

2. All portfolio securities distributed in-kind pursuant to the proposed relief will be valued at the average of the closing bid and asked prices at which the relevant securities were quoted on the relevant exchange or system during the five trading days immediately preceding the distribution.

3. The BDCs agree to use all reasonable endeavors to ensure that portfolio securities that are the subject of an in-kind distribution are transferred to limited partners as soon as practicable following their valuation and in any event within 30 days thereof.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24369 Filed 9–23–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2898]

Florida; Declaration of Disaster Loan Area

Broward County and the contiguous counties of Collier, Dade, Hendry, and Palm Beach in the State of Florida constitute a disaster area as a result of damages caused by a fire at the Plantation Towne Mall in the City of Plantation which occurred on September 5, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 11, 1996 and for economic injury until the close of business on June 16, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 289805 and for economic injury the number is 918700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 16, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–24419 Filed 9–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2894]

North Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 6, 1996, and amendments thereto on September 8 and 10, I find that Alamance, Beaufort, Bertie, Bladen, Brunswick, Carteret, Chatham, Columbus, Craven, Cumberland, Duplin, Durham, Edgecombe, Franklin, Granville, Greene, Guilford, Halifax, Harnett, Henderson, Hoke, Johnston, Jones, Lee, Lenoir, Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Polk, Richmond, Robeson, Rutherford, Sampson, Vance, Wake, Warren, Wayne, and Wilson Counties in the State of North Carolina constitute a disaster area due to damages caused by Hurricane Fran beginning on September 5, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on November 4, 1996, and for loans for economic injury until the close of business on June 6, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Anson, Buncombe, Burke, Caswell, Cleveland, Davidson, Forsyth, Haywood, Hertford, Hyde, Martin, McDowell, Montgomery, Northampton, Pitt, Randolph, Rockingham, Scotland, Stokes, Transylvania, and Washington Counties in North Carolina, and Cherokee, Chesterfield, Dillon, Greenville, Horry, Marlboro, and Spartanburg Counties in South Carolina.

Interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 289408. For economic injury the numbers are 917100 for North Carolina and 917200 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 12, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–24415 Filed 9–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2896]

Puerto Rico; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 11, 1996, I find that the Municipalities of Arroyo, Bayamon, Canovanas, Carolina, Cayey, Ceiba, Guayama, Guaynabo, Gurabo, Las Piedras, Loiza, Maunabo, Ponce, Rio Grande, Salinas, San Lorenzo, San Juan, Santa Isabel, Toa Baja, and Yabucoa in the Commonwealth of Puerto Rico constitute a disaster area due to damages caused by Hurricane Hortense beginning on September 9, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on November 11, 1996, and for loans for economic injury until the close of business on June 11, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous municipalities may be filed until the specified date at the above location: Adjuntas, Aguas Buenas, Aibonito, Caguas, Catano, Cidra, Coamo, Comerio, Dorado, Fajardo, Humacao, Jayuya, Juana Diaz, Juncos, Luquillo, Naguabo, Naranjito, Patillas, Penuelas, Toa Alta, Trujillo Alto, and Utuado in the Commonwealth of Puerto Rico.

Interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 289608 and for economic injury the number is 918400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 16, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–24416 Filed 9–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2895]

Virginia; Declaration of Disaster Loan Area

On September 6, 1996, the President approved a major disaster declaration for the Commonwealth of Virginia which was for emergency purposes only. That declaration was amended on September 7 to add Individual Assistance. As a result of that amendment and subsequent amendments on September 9 and 11, I find that the Independent Cities of Danville, Harrisonburg, Martinsville, Staunton, and Waynesboro and the counties of Augusta, Clarke, Halifax (including the Independent City of South Boston), Madison, Mecklenburg, Nelson, Page, Pittsylvania, Rappahannock, Rockbridge (including the Independent Cities of Buena Vista and Lexington), Rockingham, Shenandoah, and Warren in the Commonwealth of Virginia constitute a disaster area due to damages caused by Hurricane Fran and associated severe storm conditions, including high winds, tornadoes, wind driven rain, and river and flash flooding beginning on September 5, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on November 6, 1996, and for loans for economic injury until the close of business on June 9, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Albemarle (including the Independent City of Charlottesville), Alleghany (including the Independent Cities of Clifton Forge and Covington), Amherst, Appomattox, Bath, Bedford (including the Independent City of Bedford), Botetourt, Brunswick, Buckingham, Campbell (including the Independent City of Lynchburg), Charlotte, Culpeper, Franklin, Fauquier, Frederick, Greene, Henry, Highland, Loudoun, Lunenburg, and Orange Counties in the Commonwealth of Virginia.

Any counties contiguous to the above-named counties and not listed herein have been covered under a separate declaration for the same occurrence.

Interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 289508 and for economic injury the number is 917300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 13, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–24414 Filed 9–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2897]

West Virginia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 11, 1996, and an amendment thereto on September 13, I find that Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, Pendleton, Randolph, and Tucker Counties in the State of West Virginia constitute a disaster area due to damages caused by Hurricane Fran and associated heavy rain, winds, flooding, and slides which occurred September 5–8, 1996. Applications for loans for physical damages may be filed until the close of business on November

10, 1996, and for loans for economic injury until the close of business on June 11, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Barbour, Pocahontas, Preston, Upshur, and Webster Counties in West Virginia, and Allegany, Frederick, Garrett, and Washington Counties in Maryland.

Any counties contiguous to the above-named counties and not listed herein have been covered under a separate declaration for the same occurrence.

Interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (Including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 289708. For economic injury the numbers are 918500 for West Virginia and 918600 for Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 16, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–24417 Filed 9–23–96; 8:45 am]

BILLING CODE 8025–01–P

[License No. 01/01–0345]

Queneska Capital Corporation; Notice of Surrender of License

Notice is hereby given that Queneska Capital Corporation, 123 Church Street, Burlington, Vermont 05401 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Queneska Capital Corporation was licensed by the Small Business Administration on April 25, 1988.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on September 10, 1996. Accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–24418 Filed 9–23–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that First Union National Bank of Virginia, with offices at Corporate Trust Dept-VA3279, PO Box 26944, Richmond, Virginia 23261, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: September 18, 1996.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–24423 Filed 9–23–96; 8:45 am]

BILLING CODE 4910–81–P

Approval of Applicant as Trustee

Notice is hereby given that First Union National Bank, with offices at 765 Broad Street, 5th Floor, Newark, New Jersey 07102, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: September 18, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–24424 Filed 9–23–96; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 96–016; Notice 02]

RIN 2127–AF57

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 1994 passenger motor vehicles that occurred in calendar year (CY) 1994. The final 1994 theft data indicate an increase in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1993. The final theft rate for MY 1994 passenger vehicles stolen in calendar year 1994 increased to 4.17 thefts per thousand vehicles produced. Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment. The data were calculated for informational purposes only.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually since 1983/84. Continuing to fulfill the section 33104(b)(4) mandate, this document reports the final theft data for CY 1994, the most recent calendar year for which data are available.

In calculating the 1994 theft rates, NHTSA followed the same procedures it used in calculating the MY 1993 theft rates. (For 1993 theft data calculations, see 61 FR 1228, January 18, 1996). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1994 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1994 vehicles of that line stolen during calendar year 1994 by the total number of vehicles in that line manufactured for MY 1994, as reported to the Environmental Protection Agency.

The final 1994 theft data show an increase in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1993. The final theft rate for MY 1994 passenger vehicles stolen in CY 1994 increased to 4.17 thefts per thousand vehicles produced, an increase of 4.8 percent from the rate of 3.98 thefts per thousand vehicles experienced by MY 1993 vehicles in CY 1993. For MY 1994 vehicles, out of a total of 202 vehicle lines, 96 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 96 vehicle lines with a theft rate higher than 3.5826, 76 are passenger car lines, 17 are multipurpose passenger vehicle lines, and 3 are light-duty truck lines.

On Wednesday, March 13, 1996, NHTSA published the preliminary theft rates for CY 1994 passenger motor vehicles in the Federal Register (61 FR 10424). The agency tentatively ranked each of the MY 1994 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. In response to the March 1996 notice, the agency received written comments from the Chrysler Corporation (Chrysler), Ford Motor Company (Ford), Volkswagen of America, Inc. (Volkswagen), American Honda Motor Co., Inc. (Honda), General Motors Corporation (GM), Jaguar Cars (Jaguar), Mercedes-Benz of North America, Inc. (Mercedes-Benz) and Toyota Motor Corporate Services of North America, Inc. (Toyota). In their comments, all eight manufacturers provided the agency with corrected production figures for their vehicle lines. (The written corrections are available at the docket number cited at the beginning of this notice.)

The agency used all written comments to make the necessary adjustments to its data. As a result of the adjustments, the final theft rate and ranking of the vehicle lines changed from those published in the March 1996 notice.

In its comments, Chrysler informed the agency that although the Jeep Cherokee and the Jeep Grand Cherokee are separate and distinct vehicles, they had been erroneously listed as one vehicle line entry.

In response to Chrysler's comment, NHTSA is correcting the final theft data for several Chrysler models. As a result of these corrections, the Jeep Cherokee previously ranked No. 25 with a theft rate of 8.2980 is now ranked No. 128 with a theft rate of 2.7049; the Jeep Grand Cherokee, not previously ranked is now ranked at No. 23 with a theft rate of 8.7702. Changes to the remaining five Chrysler lines were: the Dodge Caravan/Grand Caravan previously ranked No. 54 with a theft rate of 5.3457 is now ranked No. 56 with a theft rate of 5.4156; the Chrysler New Yorker/LHS previously ranked No. 82 with a theft rate of 3.9560 is now ranked No. 70 with a theft rate of 4.6498; the Dodge Stealth previously ranked No. 138 with a theft rate of 2.1916 is now ranked No. 63 with a theft rate of 4.8435; the Eagle Summit previously ranked No. 171 with a theft rate of 1.2972 is now ranked No. 117 with a theft rate of 3.0293; and the Plymouth Colt/Colt Vista previously ranked No. 189 with a theft rate of 0.6053 is now ranked No. 160 with a theft rate of 1.7118.

Ford informed the agency that the E150 Van, a multi-purpose passenger vehicle, was not subject to coverage under 49 U.S.C. Chapter 331, Theft Prevention, because the gross vehicle weight rating exceeded the statutory limitation of 6,000 pounds.

In response to Ford's comment, NHTSA is making the necessary corrections to the final theft data. As a result of the adjustments, the Ford E150 Van, previously ranked No. 186, was removed. Additionally, Ford informed the agency that the production volume for the F150 Pickup Trucks included vehicles with a gross vehicle weight rating both greater and less than 6,000 pounds. Ford provided the production volumes for those F150 Pickup Trucks that had a gross vehicle weight rating of 6,000 pounds or less. As a result of the adjustment, the Ford F150 Pickup Truck, previously ranked No. 190 with a theft rate of 0.5421 is now ranked No. 130 with a theft rate of 2.6009. Changes to the remaining two Ford car lines were: the Ford Taurus previously ranked No. 107 with a theft rate of 3.1594 is now ranked No. 123 with a theft rate of 2.7996; the Ford Explorer previously ranked No. 139 with a theft rate of 2.1805 is now ranked No. 148 with a theft rate of 2.0459.

Additionally, Volkswagen commented that the VW Cabriolet should be changed to Audi Cabriolet and the VW Jetta should be changed to the VW Jetta III. The final theft data were modified to reflect these changes. Changes to the remaining nine Volkswagen lines were: the Volkswagen Corrado previously ranked No. 10 with a theft rate of 15.0000 is ranked No. 12 with a theft rate of 15.1515; the Audi Cabriolet previously ranked No. 80 with a theft rate of 4.0193 is now ranked No. 85 with a theft rate of 3.9714; the Volkswagen Passat previously ranked No. 111 with a theft rate of 3.0990 remains at the same rank with a theft rate of 3.0840; the Volkswagen Jetta III previously ranked No. 136 with a theft rate of 2.4360 is now ranked No. 141 with a theft rate of 2.4344; the Audi S4 previously ranked No. 141 with a theft rate of 2.1598 is now ranked No. 144 with a theft rate of 2.1231; the Volkswagen Golf III/GTI previously ranked No. 160 with a theft rate of 1.5330 is now ranked No. 165 with a theft rate of 1.5329; the Audi 100 previously ranked No. 161 with a theft rate of 1.4922 is now ranked No. 166 with a theft rate of 1.4929; the Audi 90 previously ranked No. 167 with a theft rate of 1.3592 is now ranked No. 172 with a theft rate of 1.3518; and the Volkswagen Eurovan previously ranked No. 201 with a theft rate of 0.0000 is ranked the same with a theft rate of 0.0000.

For the Honda car lines, the Acura NSX previously ranked No. 14 with a theft rate of 13.2353 is now ranked at No. 10 with a theft rate of 17.4081; the Acura Legend previously ranked No. 37 with a theft rate of 6.5616 is now ranked at No. 22 with a theft rate of 9.6944; the Acura Integra previously ranked No. 77 with a theft rate of 4.0985 is now ranked at No. 96 with a theft rate of 3.5894; the Acura Vigor previously ranked at No. 84 with a theft rate of 3.9103 is now ranked at No. 42 with a theft rate of 6.3344; the Civic previously ranked No. 86 with a theft rate of 3.8020 is now ranked No. 78 with a theft rate of 4.3100; the Prelude previously ranked No. 98 with a theft rate of 3.5473 is now ranked No. 30 with a theft rate of 8.0417; and the Accord previously ranked No. 116 with a theft rate of 3.0415 is now ranked No. 103 with a theft rate of 3.3529.

For the General Motors car lines, the Oldsmobile Cutlass Ciera previously ranked No. 27 with a theft rate of 8.1655 is now ranked No. 29 with a theft rate of 8.1574; the Buick Century previously ranked No. 42 with a theft rate of 6.1243 is now ranked No. 48 with a theft rate of 5.9451; the GMC Jimmy S–15 previously ranked No. 49 with a theft rate of 5.6309 is now ranked No. 52 with a theft rate of 5.6889; the Oldsmobile Achieva previously ranked No. 52 with a theft rate of 5.4347 is now ranked No. 54 with a theft rate of 5.6046; the Chevrolet Blazer S10 previously ranked

No. 58 with a theft rate of 5.1235 is now ranked No. 60 with a theft rate of 5.1788; the Chevrolet Lumina APV previously ranked No. 59 with a theft rate of 4.9263 is now ranked No. 62 with a theft rate of 4.9221; the Chevrolet Beretta previously ranked No. 60 with a theft rate of 4.9088 is now ranked No. 64 with a theft rate of 4.8454; the Pontiac Sunbird previously ranked No. 61 with a theft rate of 4.9008 is now ranked No. 63 with a theft rate of 4.8734; the Chevrolet Corsica previously ranked No. 62 with a theft rate of 4.8311 is now ranked No. 65 with a theft rate of 4.8250; the Chevrolet Corvette previously ranked No. 67 with a theft rate of 4.5884 is now ranked No. 72 with a theft rate of 4.5888; the Oldsmobile Silhouette APV previously ranked No. 68 with a theft rate of 4.5576 is now ranked No. 72 with a theft rate of 4.5452; the Pontiac Trans Sport APV previously ranked No. 72 with a theft rate of 4.3223 is now ranked No. 77 with a theft rate of 4.3157; the Cadillac Fleetwood previously ranked No. 73 with a theft rate of 4.2030 is now ranked No. 81 with a theft rate of 4.1964; the Buick Skylark previously ranked No. 75 with a theft rate of 4.1134 is now ranked No. 79 with a theft rate of 4.2455.

The Oldsmobile Bravada previously ranked No. 81 with a theft rate of 3.9931 is now ranked No. 82 with a theft rate of 4.0722; the Pontiac Grand Am previously ranked No. 91 with a theft rate of 3.6766 is now ranked No. 89 with a theft rate of 3.7682; the Chevrolet Sportvan G–10 previously ranked No. 92 with a theft rate of 3.6597 is now ranked No. 107 with a theft rate of 3.2284; the Chevrolet Cavalier previously ranked No. 94 with a theft rate of 3.6418 is now ranked No. 94 with a theft rate of 3.6661; the Chevrolet Camaro previously ranked No. 100 with a theft rate of 3.5375 remains the same with a theft rate of 3.5312; the Chevrolet Lumina previously ranked No. 110 with a theft rate of 3.1059 is now ranked No. 113 with a theft rate of 3.0717; the Pontiac Firebird previously ranked No. 113 with a theft rate of 3.0927 is now ranked No. 112 with a theft rate of 3.0756; the Chevrolet Astro previously ranked No. 127 with a theft rate of 2.5825 is now ranked No. 131 with a theft rate of 2.5767; the GMC Safari previously ranked No. 130 with a theft rate of 2.5578 is now ranked No. 134 with a theft rate of 2.5575.

The Oldsmobile Cutlass Cruiser previously ranked No. 131 with a theft rate of 2.5000 is now ranked No. 135 with a theft rate of 2.5335; the Chevrolet S–10 Pickup previously ranked No. 137 with a theft rate of 2.3347 is now ranked No. 142 with a theft rate of 2.3338; the Oldsmobile Cutlass Supreme previously ranked No. 143 with a theft rate of 2.1075 is now ranked No. 146 with a theft rate of 2.0981; the Cadillac Deville/Sixty Special previously ranked No. 148 with a theft rate of 1.9816 is now ranked No. 152 with a theft rate of 1.9807; the Pontiac Bonneville previously ranked No. 150 with a theft rate of 1.9212 is now ranked No. 155 with a theft rate of 1.9159; the Pontiac Grand Prix previously ranked No. 154 with a theft rate of 1.7507 is now ranked No. 159 with a theft rate of 1.7375; the Cadillac Eldorado previously ranked No. 165 with a theft rate of 1.3797 is now ranked No. 170 with a theft rate of 1.3799; the Cadillac Seville previously ranked No. 166 with a theft rate of 1.3665 is now ranked No. 171 with a theft rate of 1.3635; the GMC Sonoma previously ranked No. 175 with a theft rate of 1.2011 is now ranked No. 154 with a theft rate of 1.9506; the GMC Sierra 1500 Pickup previously ranked No. 176 with a theft rate of 1.1588 is now ranked No. 179 with a theft rate of 1.1553; the Oldsmobile 98/Touring previously ranked No. 177 with a theft rate of 1.1241 is now ranked No. 181 with a theft rate of 1.1240; the Buick LeSabre previously ranked No. 178 with a theft rate of 0.9919 is now ranked No. 182 with a theft rate of 0.9907; the Saturn SW previously ranked No.180 with a theft rate of 0.8529 is now ranked No. 184 with a theft rate of 0.8528; the Buick Roadmaster previously ranked No. 183 with a theft rate of 0.8007 is now ranked No. 187 with a theft rate of 0.7977; the Buick Park Avenue previously ranked No. 184 with a theft rate of 0.7844 is now ranked No. 188 with a theft rate of 0.7834; the GMC Rally Sportvan previously ranked No. 194 with a theft rate of 0.0000, is ranked the same with a theft rate of 0.0000.

For the Jaguar car lines, the Jaguar XJ12 previously ranked No. 112 with a theft rate of 3.0988 is now ranked No. 4 with a theft rate of 21.3499; the Jaguar XJ6 previously ranked No. 185 with a theft rate of 0.6887 is now ranked No. 190 with a theft rate of 0.1000.

For the Mercedes car lines, the Mercedes 124 (E-Class) previously ranked No. 105 with a theft rate of 3.2374 is now ranked No. 106 with a theft rate of 3.2461; the Mercedes 140 (S-Class) ranked No. 63 with a theft rate of 4.7941 is now ranked No. 67 with a theft rate of 4.7953; and the Mercedes 202 (C-Class) previously ranked No. 164 with a theft rate of 1.3810 is now ranked No. 169 with a theft rate of 1.3811.

For the Toyota lines, the Toyota Supra previously ranked at No. 15 with a theft rate of 12.1469 is now ranked No. 16 with a theft rate of 12.1572; the Toyota 4Runner previously ranked No. 24 with a theft rate of 8.4075 remains the same with a theft rate of 8.2183; the Toyota Lexus SC previously ranked No. 31 with a theft rate of 7.4199 is now ranked No. 34 with a theft rate of 7.4024; the Toyota Lexus LS previously ranked No. 44 with a theft rate of 6.0444 is now ranked No. 43 with a theft rate of 6.3209; the Toyota Lexus GS previously ranked No. 46 with a theft rate of 5.9690 is now ranked No. 50 with a theft rate of 5.9235; the Toyota Corolla/Corolla Sport previously ranked No. 74 with a theft rate of 4.1679 is now ranked No. 80 with a theft rate of 4.2323; the Toyota Paseo previously ranked No. 76 with a theft rate of 4.1026 is now ranked No. 88 with a theft rate of 3.8308; the Toyota Tercel previously ranked at No. 83 with a theft rate of 3.9130 is now ranked No. 87 with a theft rate of 3.8550; the Toyota Camry previously ranked No. 85 with a theft rate of 3.8689 is now ranked No. 86 with a theft rate of 3.9175; the Toyota Celica previously ranked No. 96 with a theft rate of 3.5574 is now ranked No. 98 with a theft rate of 3.5548; the Toyota Pickup truck previously ranked No. 101 with a theft rate of 3.5219 is now ranked No. 121 with a theft rate of 2.9328; the Toyota Previa previously ranked No. 103 with a theft rate of 3.3808 is now ranked No. 104 with a theft rate of 3.3429; the Toyota Lexus ES previously ranked No. 140 with a theft rate of 2.1716 is now ranked No. 143 with a theft rate of 2.1702; the Toyota MR2 previously ranked No. 157 with a theft rate of 1.6129 is now ranked No. 161 with a theft rate of 1.6207; and the Toyota T100 Pickup previously ranked No. 159 with a theft rate of 1.5789 is now ranked No. 165 with a theft rate of 1.5719.

The following list represents NHTSA's final calculation of theft rates for all 1994 passenger motor vehicle lines. This list is intended to inform the public of calendar year 1994 motor vehicle thefts of model year 1994 vehicles and does not have any affect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

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THEFT RATES OF MODEL YEAR 1994 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1994

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1994	PRODUCTION (MFGR'S) 1994	1994 (PER 1,000 VEHICLES PRODUCED) THEFT RATE
1	MITSUBISHI	MONTERO	488	10,295	47.4017
2	CHRYSLER CORP.	PLYMOUTH SUNDANCE	1,579	65,482	24.1135
3	CHRYSLER CORP.	LEBARON SEDAN	574	26,038	22.0447
4	JAGUAR	XJ12	31	1,452	21.3499
5	CHRYSLER CORP.	LEBARON COUPE/CONVERTIBLE	748	37,093	20.1655
6	PORSCHE	911	29	1,461	19.8494
7	CHRYSLER CORP.	DODGE SHADOW	1,714	90,288	18.9837
8	FERRARI	512	1	54	18.5185
9	CHRYSLER CORP.	DODGE SPIRIT	1,236	68,409	18.0678
10	HONDA/ACURA	NSX	9	517	17.4081
11	CHRYSLER CORP.	PLYMOUTH ACCLAIM	1,232	71,595	17.2079
12	VOLKSWAGEN	CORRADO	3	198	15.1515
13	MITSUBISHI	MIRAGE	468	34,215	13.6782
14	MITSUBISHI	EXPO	180	13,175	13.6622
15	MITSUBISHI	DIAMANTE	293	21,908	13.3741
16	TOYOTA	SUPRA	43	3,537	12.1572
17	ISUZU	AMIGO	30	2,500	12.0000
18	HYUNDAI	SONATA	24	2,010	11.9403
19	NISSAN	300ZX	51	4,298	11.8660
20	MITSUBISHI	3000GT	111	10,170	10.9145
21	NISSAN	MAXIMA	560	52,109	10.7467
22	HONDA/ACURA	LEGEND	329	33,937	9.6944
23	CHRYSLER CORP.	JEEP GRAND CHEROKEE	1,976	225,308	8.7702
24	MITSUBISHI	PRECIS	7	799	8.7610
25	HYUNDAI	SCOUPE	106	12,527	8.4617
26	BMW	3	428	50,650	8.4501
27	FORD MOTOR CO.	MUSTANG	1,018	123,500	8.2429
28	TOYOTA	4-RUNNER	586	71,304	8.2183
29	GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA	1,028	126,021	8.1574
30	HONDA	PRELUDE	128	15,917	8.0417
31	HYUNDAI	ELANTRA	313	39,386	7.9470
32	MERCEDES-BENZ	129 (SL - CLASS)	43	5,532	7.7730
33	MAZDA	RX-7	26	3,408	7.6291
34	TOYOTA	LEXUS SC	44	5,944	7.4024
35	PORSCHE	928	1	136	7.3529

THEFT RATES OF MODEL YEAR 1994 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1994--CONTINUED.

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1994	PRODUCTION (MFGR'S) 1994	1994 (PER 1,000 VEHICLES PRODUCED) THEFT RATE
36	CHRYSLER CORP.	JEEP WRANGLER	494	67,877	7.2779
37	NISSAN	PATHFINDER	441	62,439	7.0629
38	NISSAN	240SX	8	1,167	6.8552
39	BMW	5	166	25,232	6.5789
40	FORD MOTOR CO.	TEMPO	924	144,874	6.3780
41	GENERAL MOTORS	GEO TRACKER	304	47,800	6.3598
42	HONDA/ACURA	VIGOR	61	9,630	6.3344
43	TOYOTA	LEXUS LS	136	21,516	6.3209
44	BMW	7	60	9,564	6.2735
45	MITSUBISHI	PICKUP TRUCK	73	11,780	6.1969
46	FORD MOTOR CO.	LINCOLN TOWN CAR	687	113,045	6.0772
47	HYUNDAI	EXCEL	302	50,421	5.9896
48	GENERAL MOTORS	BUICK CENTURY	777	130,696	5.9451
49	BMW	8	4	674	5.9347
50	TOYOTA	LEXUS GS	77	12,999	5.9235
51	SUZUKI	SAMURAI	11	1,930	5.6995
52	GENERAL MOTORS	GMC JIMMY S-15	336	59,062	5.6889
53	MAZDA	929	57	10,124	5.6302
54	GENERAL MOTORS	OLDSMOBILE ACHIEVA	291	51,922	5.6046
55	NISSAN	SENTRA	1,025	187,877	5.4557
56	CHRYSLER CORP.	DODGE CARAVAN/GRAND	1,533	283,072	5.4156
57	MAZDA	323/PROTEGE	556	103,637	5.3649
58	NISSAN	ALTIMA	703	132,183	5.3184
59	FORD MOTOR CO.	MERCURY TOPAZ	266	50,956	5.2202
60	GENERAL MOTORS	CHEVROLET BLAZER S-10	814	157,179	5.1788
61	NISSAN	INFINITI Q45	89	17,190	5.1774
62	GENERAL MOTORS	CHEVROLET LUMINA APV	238	48,353	4.9221
63	GENERAL MOTORS	PONTIAC SUNBIRD	463	95,006	4.8734
64	GENERAL MOTORS	CHEVROLET BERETTA	305	62,946	4.8454
65	CHRYSLER CORP.	DODGE STEALTH	39	8,052	4.8435
66	GENERAL MOTORS	CHEVROLET CORSICA	657	136,165	4.8250
67	MERCEDES-BENZ	140 (S - CLASS)	56	11,678	4.7953
68	CHRYSLER CORP.	PLYMOUTH VOYAGER/GRAND	1,062	223,743	4.7465
69	MITSUBISHI	ECLIPSE	179	37,930	4.7192
70	CHRYSLER CORP.	NEW YORKER/LHS	354	76,132	4.6498

THEFT RATES OF MODEL YEAR 1994 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1994--CONTINUED.

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1994	PRODUCTION (MFGR'S) 1994	1994 (PER 1,000 VEHICLES PRODUCED) THEFT RATE
71	CHRYSLER CORP.	TOWN & COUNTRY MPV	172	37,297	4.6116
72	GENERAL MOTORS	CHEVROLET CORVETTE	102	22,228	4.5888
73	GENERAL MOTORS	OLDSMOBILE SILHOUETTE APV	68	14,961	4.5452
74	MITSUBISHI	GALANT/SIGMA	378	84,390	4.4792
75	SUZUKI	SIDEKICK	107	24,390	4.3870
76	PORSCHE	968	6	1,379	4.3510
77	GENERAL MOTORS	PONTIAC TRANS SPORT APV	150	34,757	4.3157
78	HONDA	CIVIC	1,066	247,329	4.3100
79	GENERAL MOTORS	BUICK SKYLARK	240	56,530	4.2455
80	TOYOTA	COROLLA/COROLLA SPORT	874	206,509	4.2323
81	GENERAL MOTORS	CADILLAC FLEETWOOD	96	22,877	4.1964
82	GENERAL MOTORS	OLDSMOBILE BRAVADA MPV	72	17,681	4.0722
83	GENERAL MOTORS	GEO METRO	375	92,640	4.0479
84	FORD MOTOR CO.	PROBE	344	85,566	4.0203
85	AUDI	CABRIOLET	5	1,259	3.9714
86	TOYOTA	CAMRY	1,257	320,865	3.9175
87	TOYOTA	TERCEL	396	102,725	3.8550
88	TOYOTA	PASEO	48	12,530	3.8308
89	GENERAL MOTORS	PONTIAC GRAND AM	846	224,508	3.7682
90	KIA MOTORS	SEPHIA	64	17,000	3.7647
91	CHRYSLER CORP.	PLYMOUTH LASER	20	5,317	3.7615
92	FORD MOTOR CO.	THUNDERBIRD	445	120,357	3.6973
93	MAZDA	MPV WAGON	102	27,695	3.6830
94	GENERAL MOTORS	CHEVROLET CAVALIER	978	266,772	3.6661
95	FORD MOTOR CO.	MERCURY SABLE	375	103,113	3.6368
96	HONDA/ACURA	INTEGRA	293	81,630	3.5894
97	FORD MOTOR CO.	LINCOLN MARK VIII	96	26,976	3.5587
98	TOYOTA	CELICA	127	35,726	3.5548
99	MAZDA	626/MX-6	369	103,861	3.5528
100	GENERAL MOTORS	CHEVROLET CAMARO	428	121,206	3.5312
101	FORD MOTOR CO.	LINCOLN CONTINENTAL	175	49,766	3.5165
102	ISUZU	RODEO	206	59,300	3.4739
103	HONDA	ACCORD	1,308	390,112	3.3529
104	TOYOTA	PREVIA	57	17,051	3.3429

THEFT RATES OF MODEL YEAR 1994 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1994—CONTINUED.

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1994	PRODUCTION (MFGR'S) 1994	1994 (PER 1,000 VEHICLES PRODUCED) THEFT RATE
105	MAZDA	MX-5 MIATA	67	20,128	3.3287
106	MERCEDES-BENZ	124 (E-CLASS)	80	24,645	3.2461
107	GENERAL MOTORS	CHEVROLET SPORTVAN G-10	8	2,478	3.2284
108	FORD MOTOR CO.	ESCORT	919	285,984	3.2135
109	NISSAN	PICKUP TRUCK	371	119,322	3.1092
110	CHRYSLER CORP.	EAGLE TALON	68	21,885	3.1072
111	VOLKSWAGEN	PASSAT	16	5,188	3.0840
112	GENERAL MOTORS	PONTIAC FIREBIRD	142	46,170	3.0756
113	GENERAL MOTORS	CHEVROLET LUMINA	257	83,668	3.0717
114	CHRYSLER CORP.	DODGE COLT/COLT VISTA	16	5,211	3.0704
115	SUBARU	SVX	8	2,607	3.0687
116	HONDA	PASSPORT	61	20,000	3.0500
117	CHRYSLER CORP.	EAGLE SUMMIT	35	11,554	3.0293
118	FORD MOTOR CO.	ASPIRE	114	37,998	3.0002
119	ISUZU	TROOPER	72	24,000	3.0000
120	VOLVO	940	81	27,561	2.9389
121	TOYOTA	PICKUP TRUCK	691	235,611	2.9328
122	ISUZU	PICKUP	63	22,400	2.8125
123	FORD MOTOR CO.	TAURUS	959	342,543	2.7996
124	MAZDA	MX-3	43	15,459	2.7816
125	VOLVO	960	22	7,959	2.7642
126	NISSAN	INFINITI G20	25	9,117	2.7421
127	FORD MOTOR CO.	CROWN VICTORIA	188	69,405	2.7087
128	CHRYSLER CORP.	JEEP CHEROKEE	925	341,975	2.7049
129	FORD MOTOR CO.	AEROSTAR	352	132,842	2.6498
130	FORD MOTOR CO.	F150 PICKUP TRUCK	237	91,123	2.6009
131	GENERAL MOTORS	CHEVROLET ASTRO	347	134,668	2.5767
132	SUZUKI	SWIFT	41	15,960	2.5689
133	FORD MOTOR CO.	MERCURY COUGAR	182	71,032	2.5622
134	GENERAL MOTORS	GMC SAFARI	115	44,966	2.5575
135	GENERAL MOTORS	OLDSMOBILE CUTLASS CRUISER	24	9,473	2.5335
136	NISSAN	INFINITI J30	51	20,696	2.4642
137	FORD MOTOR CO.	MERCURY TRACER	113	46,050	2.4539
138	GENERAL MOTORS	GEO PRIZM	265	108,000	2.4537

THEFT RATES OF MODEL YEAR 1994 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1994—CONTINUED.

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1994	PRODUCTION (MFGR'S) 1994	1994 (PER 1,000 VEHICLES PRODUCED) THEFT RATE
139	MAZDA	NAVAJO	21	8,572	2.4498
140	FORD MOTOR CO.	MERCURY CAPRI	9	3,679	2.4463
141	VOLKSWAGEN	JETTA III	115	47,239	2.4344
142	GENERAL MOTORS	CHEVROLET S-10 PICKUP	513	219,809	2.3338
143	TOYOTA	LEXUS ES	81	37,323	2.1702
144	AUDI	S4	1	471	2.1231
145	SUBARU	LEGACY	64	30,301	2.1121
146	GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	233	111,054	2.0981
147	CHRYSLER CORP.	INTREPID	269	130,604	2.0597
148	FORD MOTOR CO.	EXPLORER	742	362,677	2.0459
149	GENERAL MOTORS	SATURN SC	115	56,258	2.0442
150	GENERAL MOTORS	SATURN SL	363	180,462	2.0115
151	CHRYSLER CORP.	DODGE DAKOTA PICKUP	206	102,490	2.0100
152	GENERAL MOTORS	CADILLAC DEVILLE/SIXTY SPECIAL	226	114,100	1.9807
153	GENERAL MOTORS	CHEVROLET C-1500 PICKUP	574	290,265	1.9775
154	GENERAL MOTORS	GMC SONOMA	117	59,981	1.9506
155	GENERAL MOTORS	PONTIAC BONNEVILLE	154	80,381	1.9159
156	FORD MOTOR CO.	MERCURY GRAND MARQUIS	179	95,402	1.8763
157	JAGUAR	XJS	8	4,461	1.7933
158	GENERAL MOTORS	CHEVROLET CAPRICE	147	83,655	1.7572
159	GENERAL MOTORS	PONTIAC GRAND PRIX	234	134,680	1.7375
160	CHRYSLER CORP.	PLYMOUTH COLT/COLT VISTA	11	6,426	1.7118
161	TOYOTA	MR2	1	617	1.6207
162	NISSAN	QUEST	69	42,575	1.6207
163	VOLVO	850	70	44,241	1.5822
164	TOYOTA	T100 PICKUP TRUCK	21	13,360	1.5719
165	VOLKSWAGEN	GOLF III/GTI	19	12,395	1.5329
166	AUDI	100	7	4,689	1.4929
167	CHRYSLER CORP.	CONCORDE	100	70,394	1.4206
168	GENERAL MOTORS	OLDSMOBILE 88 ROYALE	104	74,702	1.3922
169	MERCEDES-BENZ	202 (C - CLASS)	24	17,377	1.3811
170	GENERAL MOTORS	CADILLAC ELDORADO	33	23,915	1.3799
171	GENERAL MOTORS	CADILLAC SEVILLE	57	41,805	1.3635
172	AUDI	90	4	2,959	1.3518

THEFT RATES OF MODEL YEAR 1994 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1994-- CONTINUED.

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1994	PRODUCTION (MFGR'S) 1994	1994 (PER 1,000 VEHICLES PRODUCED) THEFT RATE
173	MAZDA	B SERIES PICKUP	141	104,686	1.3469
174	SUBARU	IMPREZA	12	9,067	1.3235
175	SAAB	9000	7	5,334	1.3123
176	GENERAL MOTORS	BUICK REGAL	102	78,549	1.2986
177	CHRYSLER CORP.	EAGLE VISION	28	21,999	1.2728
178	SAAB	900	16	12,734	1.2565
179	GENERAL MOTORS	GMC SIERRA 1500 PICKUP	185	160,136	1.1553
180	FORD MOTOR CO.	RANGER PICKUP	512	450,757	1.1359
181	GENERAL MOTORS	OLDSMOBILE 98/TOURING	28	24,911	1.1240
182	GENERAL MOTORS	BUICK LESABRE	148	149,392	0.9907
183	SUBARU	LOYALE	3	3,430	0.8746
184	GENERAL MOTORS	SATURN SW	14	16,416	0.8528
185	CHRYSLER CORP.	DODGE VIPER	2	2,365	0.8457
186	SUBARU	JUSTY	2	2,391	0.8365
187	GENERAL MOTORS	BUICK ROADMASTER	28	35,100	0.7977
188	GENERAL MOTORS	BUICK PARK AVENUE	48	61,270	0.7834
189	FORD MOTOR CO.	MERCURY VILLAGER (MPV)	36	54,185	0.6644
190	JAGUAR	XJ6	1	10,004	0.1000
191	ALFA ROMEO	SPIDER	0	187	0.0000
192	LOTUS	ESPIRIT	0	211	0.0000
193	FERRARI	348	0	430	0.0000
194	GENERAL MOTORS	GMC RALLY SPORTVAN	0	729	0.0000
195	LAMBORGHINI	DIABLO	0	66	0.0000
196	ROLLS-ROYCE	TURBO R	0	31	0.0000
197	ROLLS -ROYCE	CORNICHE/CONTINENTAL	0	80	0.0000
198	ROLLS-ROYCE	SIL SPIRIT/SPUR/MULS/EIGHT	0	108	0.0000
199	ROLLS-ROYCE	BROOKLANDS	0	58	0.0000
200	AUDI	V8	0	17	0.0000
201	VOLKSWAGEN	EUROVAN	0	252	0.0000
202	ALFA ROMEO	164	0	362	0.0000

Issued on: September 18, 1996.

L. Robert Shelton,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–24420 Filed 9–23–96; 8:45 am]

BILLING CODE 4910–59–C

Surface Transportation Board

[Docket Nos. 41242 et al.[1]]

Central Power & Light Company v. Southern Pacific Transportation Company

AGENCY: Surface Transportation Board.
ACTION: Modification of procedural schedule and notice of oral argument.

SUMMARY: The Board has modified the procedural schedule in these proceedings.

DATES: Comments are due by October 15, 1996. Rebuttal pleadings are due on October 25, 1996. Oral argument is set for October 31, 1996.

ADDRESSES: Send an original and 10 copies of submissions, referring to Nos. 41242 *et al.* to: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

One copy of each submission should be sent to counsel for each party of record in each of the cases.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional details, including a fuller description of the issues, appear in the Board's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: September 18, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–24430 Filed 9–23–96; 8:45 am]

BILLING CODE 4915–00–P

[1] This notice embraces: No. 41295, *Pennsylvania Power & Light Co.* v. *Consolidated Rail Corp.;* and No. 41626, *MidAmerican Energy Co.* v. *Union Pac. R.R. and Chicago and North W. Ry.* A fourth case—No. 41604, *Western Resources, Inc.* v. *The Atchison, T.&S.F. Ry.*—involves similar issues, but has been stayed pending judicial resolution of certain contract interpretation matters.

Surface Transportation Board [1]

[STB Finance Docket No. 33118]

Warren & Trumbull Railroad Company—Lease and Operation Exemption—Rail Lines in Trumbull County, OH

Warren & Trumbull Railroad Company (WTRC), a Class III railroad, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate 2.4 miles of rail line currently owned and operated by CSX Transportation, Inc. between milepost A–79.6 and milepost A–82.0 in Girard, Trumbull County, OH.

The transaction was scheduled to be consummated on or after the effective date of September 16, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33118, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036. Telephone: (202) 347–7170.

Decided: September 16, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–24429 Filed 9–23–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

Federal Register

Tuesday
September 24, 1996

Part II

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Vietnam Era Veterans; Proposed Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

RIN 1215–AA62

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Vietnam Era Veterans

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Proposed Rule.

SUMMARY: The proposal published today would revise the current regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). VEVRAA requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. Today's proposal makes two general types of revisions to the VEVRAA regulations. First, it would generally conform the VEVRAA regulations to the Office of Federal Contract Compliance Programs' final rule revising the regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended (Section 503). Second, it would withdraw portions of a final rule published by the Department of Labor on December 30, 1980 (which was subsequently suspended) concerning VEVRAA, Executive Order 11246, and Section 503. The withdrawal applies only to those provisions of the rule which pertain to VEVRAA.

DATES: Comments are invited from the public and other Federal agencies regarding both the proposal to revise the current VEVRAA regulations and the proposal to partially withdraw the final rule of 1980. To be assured of consideration, comments must be in writing and must be received on or before November 25, 1996.

ADDRESSES: Comments should be sent to Joe N. Kennedy, Deputy Director, Office of Federal Contract Compliance Programs, Room C3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

As a convenience to commenters, the Office of Federal Contract Compliance Programs will accept public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is (202) 219–6195. Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Office of Federal Contract Compliance Programs at (202) 219–9430.

Comments received will be available for public inspection in Room C3325, from 9 a.m. to 5 p.m., Monday through Friday, except legal holidays, from October 8, 1996 until the Department publishes this rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment, call (202) 219–9430 (voice), 1–800–326–2577 (TDD).

Copies of this notice of proposed rulemaking are available in the following alternative formats: large print, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Federal Contract Compliance Programs by calling (202) 219–9430 (voice) or 1–800–326–2577 (TDD).

FOR FURTHER INFORMATION CONTACT: Joe N. Kennedy, Deputy Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, N.W., Room C3325, Washington, D.C. 20210. Telephone: (202) 219–9475 (voice), 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION:

Overview of Proposed Rule

1. Revision of Current Regulations

The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (Section 4212 or VEVRAA) require parties holding Government contracts and subcontracts of $10,000 or more, to ''take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.'' (VEVRAA, which was originally codified at 38 U.S.C. 2012, was redesignated as 38 U.S.C. 4212 by Section 5(a) of the Department of Veterans Affairs Codification Act, Public Law 102–83, August 6, 1991; no substantive change to VEVRAA resulted from this legislation.) The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), which has exclusive authority to enforce Section 4212, has published regulations implementing the Act at 41 CFR Part 60–250. These regulations, consistent with the statute's mandate, establish various affirmative action obligations for contractors (e.g., contractors are required to use effective practices to recruit special disabled veterans and veterans of the Vietnam era). The regulations require that contractors refrain from discriminating against special disabled veterans and veterans of the Vietnam era in all aspects of employment inasmuch as this prohibition is an indispensable component of affirmative action. Another central requirement of the current regulations is that contractors make reasonable accommodation to the known physical or mental limitations of a qualified special disabled veteran applicant or employee, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. An accommodation is, for example, any change in the work environment (e.g., the modification or acquisition of equipment) or in the way a job is customarily performed (e.g., changes in work assignments) that enables a qualified special disabled veteran to enjoy equal employment opportunities.

Today's proposal is precipitated, in part, by OFCCP's publication of a final rule revising the regulations implementing Section 503 of the Rehabilitation Act of 1973. (61 FR 19336, May 1, 1996). Section 503 requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. In turn, the revision to the Section 503 regulations was designed, in part, to conform those regulations to those published by the Equal Employment Opportunity Commission (EEOC) implementing Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* See 29 CFR Part 1630. Title I of the ADA, which is enforced by the EEOC, prohibits private and state and local governmental employers with 15 or more employees from discriminating against qualified individuals with disabilities in all aspects of employment. The ADA regulations establish comprehensive, detailed prohibitions regarding disability discrimination but do not require affirmative action. OFCCP has modeled its regulations implementing Section 4212 on those implementing Section 503. This reflects the close similarity between the statutes in terms of their substantive protections and jurisdictional requirements. For instance, Section 4212, like Section 503, protects disabled individuals, albeit a more narrow class of disabled persons—that is, ''special disabled veterans'' (see the discussion regarding proposed § 60–250.2(n) below). The current VEVRAA

regulations are identical to the former Section 503 regulations except where differences are necessary because of the nature of the protected class or differences in the statutes, to assure that covered contractors were subject to consistent requirements under both laws. In order to retain that consistency and avoid confusion and conflict, OFCCP believes that the Section 4212 regulations should continue to parallel the Section 503 regulations. Accordingly, OFCCP proposes to revise the Section 4212 regulations to conform them to the Section 503 final rule. Thus, today's proposal, similar to the final Section 503 regulations, adopts the standards contained in the regulations implementing the ADA regarding disability discrimination; but applies these standards with respect to special disabled veterans and veterans of the Vietnam era.

Specific changes are discussed in the Section-by-Section Analysis below.

2. Partial Withdrawal of the 1980 Final Rule

OFCCP also proposes to partially withdraw a final rule published by the Agency on December 30, 1980 (45 FR 86215; corrected at 46 FR 7332, January 23, 1981), and deferred indefinitely on August 21, 1981 (46 FR 42865). That 1980 rule would have revised the regulations at 41 CFR Chapter 60 implementing Section 4212 as well as two other laws enforced by OFCCP—Executive Order 11246 (30 FR 12319, September 28, 1965), as amended, and Section 503. Executive Order 11246 requires Government contractors and subcontractors to assure equal employment opportunity without regard to race, color, religion, sex and national origin. As noted above, Section 503 mandates similar requirements with regard to the employment of individuals with disabilities.

The December 30, 1980, rule was to take effect on January 29, 1981. On January 28, 1981, the Department of Labor published a notice (at 46 FR 9084) delaying the effective date of the final rule until April 29, 1981, to allow the Department time to review the regulation fully. The Department published three subsequent deferrals of the rule in 1981 in order to fully review the OFCCP regulations in accordance with Executive Order 12291, to permit consultation with interested groups, and to comply with new intergovernmental review and coordination procedures. The Department again postponed the rule's effective date on August 25, 1981, until action could be taken on a proposed rule published on the same date (46 FR 42968). The August 25, 1981, proposal would have revised a number of provisions contained in the December 30, 1980, final rule as well as a number of provisions in 41 CFR Chapter 60 which were not amended by that final rule. Final action has not been taken with respect to the proposed regulations issued on August 25, 1981, or, consequently with respect to the 1980 final rule.

The substance of a number of the provisions contained in the 1980 final rule pertaining to the current Section 4212 regulations has been incorporated into today's proposal. However, OFCCP has determined not to go forward with some of the other revisions to the regulations. For instance, unlike today's proposal (and the current regulations), the 1980 final rule would have consolidated a number of the provisions of the Section 4212 regulations with common provisions implementing Executive Order 11246 and Section 503 into 41 CFR Part 60–1, which currently sets out the general obligations under the Executive Order.

Significant differences between this proposal, the current regulations and the 1980 final rule are discussed in detail in the Section-by-Section Analysis below. (Provisions contained in the 1980 final rule which are substantially similar to the parallel provisions in the current regulations are not separately discussed.) In order to avoid conflict between today's proposal and the 1980 final rule, OFCCP proposes to withdraw all provisions of the 1980 rule that pertain to Section 4212.

Request for Comments

Interested parties, including public and private veterans' organizations and employers, are invited to participate in this proposed rulemaking by submitting written views.

Section-by-Section Analysis

This proposed rule consists of five subparts. Subpart A, ''Preliminary Matters, Equal Opportunity Clause,'' explains the purpose, application and construction of the regulations in general and contains an extensive definitions section. The definitions section incorporates the definitions contained in the Section 503 final rule which are relevant to the enforcement of Section 4212 as well as a revision to the definition of ''special disabled veteran.'' Subpart A also contains provisions relating to coverage under Section 4212, and coverage exemptions and waivers, as well as the equal opportunity clause, which delineates a covered contractor's general duties under the Act. Subpart B is a new subpart, which specifies the employment actions that will be deemed to constitute prohibited discrimination under Section 4212. In general, this subpart is substantially identical to the parallel provisions in the Section 503 final rule. Where appropriate, references to special disabled veterans and veterans of the Vietnam era have been substituted for the references in the Section 503 regulations to individuals with disabilities. Subpart C, which governs the applicability of the affirmative action program requirement, reorganizes, clarifies and strengthens the affirmative action provisions in the current regulations. These revisions parallel those found in the Section 503 final rule. As stated in proposed § 60–250.40(a), the requirements of Subpart C apply only to Government contractors with 50 or more employees and a contract of $50,000 or more. All other subparts of the regulation are applicable to all contractors covered by Section 4212. Subpart D covers general enforcement and complaint procedures. In order to help ensure that OFCCP uses a consistent enforcement approach with that used under Executive Order 11246 (which OFCCP also enforces), this subpart, again paralleling the changes in the Section 503 final rule, incorporates a number of provisions from the regulations implementing the Executive Order. Further, Subpart D's provisions regarding complaint procedures, like the counterpart provisions in the Section 503 final rule, are in part based on the procedural regulations applicable to the ADA. These procedures are also revised to reflect an amendment to Section 4212. Subpart E, Ancillary Matters, incorporates revised provisions on recordkeeping (e.g., it extends the current one-year record retention period to two years for larger contractors and conforms the scope of the retention obligation to that applied by the EEOC under the ADA and by OFCCP under Section 503), adds a mandatory notice posting requirement, and makes other revisions. Finally, the proposal contains a new appendix which sets out guidance on the duty to provide reasonable accommodation under the Act. The appendix is substantially identical to the counterpart appendix contained in the Section 503 final rule. In turn, that appendix is consistent with the discussion of the issue of reasonable accommodation contained in the Interpretative Guidance on Title I of the Americans with Disabilities Act, which is set out as an appendix to the EEOC's ADA regulations. Accordingly, the EEOC appendix may be relied on for

guidance with respect to parallel provisions of this proposal.

The following analysis focuses on a comparison of today's proposal with the current Section 4212 regulation and the 1980 final rule. The analysis discusses the parallel changes in the Section 503 final rule where necessary to place today's proposal in context. This proposal uses a long form amending procedure in which all sections of the regulations are republished (except for those deleted in their entirety), including sections for which no changes are proposed and sections for which the only proposed change would be the section number. Use of the long form procedure ensures maximum clarity.

Subpart A—Preliminary Matters, Equal Opportunity Clause

Section 60–250.1 Purpose, Applicability and Construction

This section is derived from current § 60–250.1 (''Purpose and application'') and is generally consistent with that section. A number of clarifying revisions are proposed. As reflected in its Purpose and application section (§ 60–1.1), the 1980 final rule would have consolidated provisions (e.g., its definitions provisions) which are applicable to both Section 4212 and Executive Order 11246 into 41 CFR Part 60–1. Further, § 60–1.1 of the 1980 final rule would have established some common enforcement procedures under all of the laws enforced by OFCCP by making certain procedures (e.g., the show cause notice), which were previously applicable only to the Executive Order, applicable to Section 4212. Today's proposal does not consolidate any of the Section 4212 regulations with those implementing the Executive Order. OFCCP believes that consolidation of provisions in this way is not practical at this time. However, like the 1980 final rule, today's proposal incorporates some of the Executive Order enforcement procedures, including the show cause notice procedure.

Proposed paragraph (a) states in part that Section 4212 requires contractors to take affirmative action with respect to the employment of qualified ''special disabled veterans.'' Section 60–250.1 of the current regulations makes reference instead to ''disabled veterans.'' This proposed change in terminology is based on amendments to VEVRAA which have not been previously incorporated into the Section 4212 regulations (see § 60–250.2(n) defining ''special disabled veteran'').

Paragraph (b) clarifies that contracts under which the Government is a purchaser as well as those under which it is a seller are covered by the Act. (See discussion regarding the definition of ''Government contract'' contained in § 60–250.2(i).) Additionally, paragraph (b) provides that compliance by a covered contractor with Part 60–250 will not generally determine its compliance with other statutes, and that the reverse is also true.

The purpose and application section of the 1980 final rule (§ 60–250.1) states that Part 60–250 applies to all Government contracts, ''including Federal deposit and share insurance.'' The preamble to the 1980 final rule (45 FR 86218) states that OFCCP believes that Federal deposit and share insurance are contracts within the meaning of Section 4212. In the course of preparing its 1996 final rule implementing Section 503, OFCCP conducted a careful and detailed reevaluation of its position in light of changes in some of the statutes affecting the financial industry. Based upon that review, OFCCP continues to believe in the soundness of its position.

However, today's proposal differs from the 1980 final rule in that it does not expressly state that the regulations cover Federal deposit and share insurance. The proposal does not otherwise make reference to the precise subject matter of particular types of covered contracts, and therefore OFCCP no longer considers it necessary to single out deposit and share insurance for express mention in the regulations.

OFCCP wishes to reemphasize that it will continue to maintain its long-standing policy of imposing sanctions other than debarment of financial institutions from future deposit or share insurance, or cancellation, termination or suspension of a financial institution's deposit or share insurance for violations of Section 4212.

Paragraph (c)(1) states that the interpretative guidance set out as an appendix to the EEOC's ADA regulations may be relied on in interpreting the parallel provisions of this part. This provision reflects the fact that Part 60–250, as revised, incorporates the large majority of the EEOC's nondiscrimination regulations without substantive change (i.e., it incorporates the standards contained in the Section 503 final rule, which, in turn, adopted the EEOC's standards).

The first sentence of paragraph (c)(2), relationship to other laws, states that Part 60–250 does not invalidate or limit the protections or procedures of other laws that provide greater or equal protection for the rights of special disabled veterans or veterans of the Vietnam era. This parallels a provision of the Section 503 final rule (first sentence of § 60–741.1(c)(2)), which, in turn, is based on an analogous provision in the EEOC regulations (§ 1630.1(c)(2)).

The second sentence of paragraph (c)(2) is modeled on parallel provisions of the Section 503 regulation, which parallels § 1630.15(e) of the EEOC regulations. Paragraph (c)(2) of today's proposal provides that the contractor may take an action which would violate Part 60–250 or refrain from taking an action required by that part where such action or omission is required or necessitated by another Federal law or regulation. This provision would permit, for example, the use of medical and safety standards or inquiries that are mandated or necessitated by other Federal laws or regulations. For instance, under this provision, contractors would be permitted to comply with requirements relating to the collection, analysis and disclosure of certain medical information which are imposed by the Mine Safety and Health Act (MSHA) and the Occupational Safety and Health Act (OSHA) (and related state laws which have been approved by the Occupational Safety and Health Administration). Some of these standards necessitate the review and analysis of workers' medical information by employers as well as by agency officials; such action by a contractor, absent this provision, might violate proposed § 60–250.23 on Medical examinations and inquiries.

Section 60–250.2 Definitions

The proposal substantially supplements the definitions section contained in the current Section 4212 regulations (§ 60–250.2) by incorporating a number of new terms and by modifying or deleting a number of existing terms. Most notably, the proposal incorporates into the definitions section relevant terms and definitions from the Section 503 final rule at § 60–741.2 without substantive change. This was done to foster consistency between the two sets of regulations. A number of these terms were adopted by the Section 503 final rule from the ADA's regulations (''essential functions,'' ''reasonable accommodation,'' ''undue hardship,'' ''qualification standards,'' and ''direct threat''). Accordingly, the interpretative guidance contained in the EEOC's ADA regulations may be consulted regarding the application of these specific terms (with the exception of ''qualification standards,'' which the guidance does not address). A number of existing definitions also would be deleted or revised in order to conform to the parallel provisions in the Section 503

final rule. Similarly, several definitions that are not in the existing VEVRAA rule, but were included in the 1980 final rule, would not be carried forward here. Further, the proposal incorporates amendments that have been made to Section 4212 since the regulations were originally issued in 1976. Moreover, in contrast to the existing rule, which sets out the defined terms in alphabetical order, the proposal arranges the definitions by subject matter, and sets out each defined term as a letter-designated paragraph. This change in organization is intended to make the terms more easily understandable and to conform to the Section 503 final rule.

Section 60–250.2(a) ''Act''

This definition of ''Act'' is substantially identical to the current definition.

Section 60–250.2(b) ''Equal Opportunity Clause''

OFCCP proposes to substitute the term ''equal opportunity clause'' for the term ''affirmative action and nondiscrimination clause''—which is used in the current regulations and refers to a specific set of obligations imposed under Section 4212 that must be set out in all contracts and subcontracts covered by the Act (*see* proposed § 60–250.5). The purpose of this revision is to conform the terminology used in the Section 4212 regulations with that used in OFCCP's regulations implementing Executive Order 11246 (*see* 41 CFR Part 60–1) (which also is adopted by the Section 503 final rule).

Section 60–250.2(c) ''Secretary''

OFCCP proposes to revise the definition of ''Secretary''—which refers to the Secretary of Labor in the current regulations—to include a designee of the Secretary. This revision would permit the Secretary to delegate authority under Section 4212 to the Deputy Secretary and other subordinates. The definition of the term ''Assistant Secretary,'' which appears in the current regulations, is therefore no longer necessary, and thus is omitted in this proposal. Similarly, the definition of ''rules, regulations and relevant orders of the Secretary of Labor'' contained in the current regulations, which makes reference to the designee of the Secretary, also is omitted as it is unnecessary.

Section 60–250.2(d) ''Deputy Assistant Secretary''

OFCCP proposes to substitute a definition of ''Deputy Assistant Secretary'' for the definition of ''Director'' in the current regulations to reflect a corresponding redesignation of the position effective February 14, 1994. This substitution is made throughout the proposal.

Section 60–250.2(e) ''Government''

The proposed definition of this term is substantially identical to the current definition.

Section 60–250.2(f) ''United States''

OFCCP proposes to revise the current definition of ''United States'' by deleting the references contained therein to the Panama Canal Zone and the Trust Territory of the Pacific Islands, and by incorporating references to the Northern Mariana Islands and Wake Island.

Section 60–250.2(g) ''Recruiting and Training Agency''

The proposal incorporates the current definition of this term without change.

Section 60–250.2(h) ''Contract''

The proposed definition of ''contract'' revises the current regulatory definition—''any Government contract''—to subsume the term ''subcontract.'' This approach is consistent with that used in the 1980 final rule (§ 60–1.3), and is intended to obviate the need to make a separate reference to ''subcontract'' each time ''contract'' is referenced to demonstrate that a particular provision applies to both contracts and subcontracts. Accordingly, the proposal generally references the term ''subcontract'' only when necessary to the context.

Section 60–250.2(i) ''Government Contract''

The definition of ''Government contract'' is revised, consistent with the definition of the term contained in the Section 503 final rule, to clarify that covered contracts include those under which the Government is a seller of goods or services as well as those under which it is a purchaser. Hence, the proposal substitutes a reference to contracts for the ''purchase, sale or use'' of goods or services for the existing reference to the ''furnishing'' of goods or services. The proposal also revises the definition to make it clear, consistent with the language of the Act, that only contracts regarding personal property (including those for the use of real property where such use constitutes personal property) and ''nonpersonal'' services are covered. Further, the proposed revision consolidates within the definition of ''Government contract'' definitions for four terms referenced therein which are separately defined in the current regulations (''modification,'' ''contracting agency,'' ''person,'' and ''construction''), and establishes a subdefinition for ''personal property,'' which is not contained in the current regulations. (The definition of the term ''agency'' in the current regulations—''any contracting agency of the government''—has been deleted as unnecessary; references to ''contracting agency'' have been substituted in this proposal for references to ''agency'' wherever appropriate to the context.) The relevant subdefinitions are made applicable to the definition of ''subcontract'' at § 60–250.2(l) as well. Under the 1980 final rule, the definition of ''Government contract'' contains a clarification with regard to the coverage of personal property, which is similar to, but less precise than, the clarification contained in today's proposal.

Section 60–250.2(j) ''Contractor''

Currently, the term is defined as a prime contractor or subcontractor; the proposal revises the definition to refer to a prime contractor or subcontractor ''having a contract of $10,000 or more.'' Because the term ''contractor'' encompasses the term ''subcontractor,'' references to the latter term generally have been deleted from the regulations by the proposal.

Section 60–250.2(k) ''Prime Contractor''

The proposal revises the definition of ''prime contractor'' to incorporate a reference to persons holding a contract ''of $10,000 or more.''

Section 60–250.2(l) ''Subcontract''

The proposal incorporates changes which conform the current definition of ''subcontract'' to the proposed definition of ''Government contract'' (§ 60–250.2(i)); that is, as revised, the definition references agreements for the ''purchase, sale or use of personal property or nonpersonal services (including construction).''

Section 60–250.2(m) ''Subcontractor''

The proposed definition is substantially identical to the current regulatory definition. The 1980 final rule's definition contains a subdefinition of ''First-tier subcontractor.'' OFCCP no longer believes that such a subdefinition is necessary.

Section 60–250.2(n) ''Special Disabled Veteran''

The current regulations (at § 60–250.2) make reference to the term ''disabled veteran'' rather than the term ''special disabled veteran,'' which is employed by the proposal. ''Disabled

veteran'' is defined under current § 60–250.2 as a person entitled to disability compensation under laws administered by the Veterans Administration for disability rated at 30 percent or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty. The proposed definition incorporates amendments to Section 4212 and the Act's definitional section (42 U.S.C. 4211) which resulted in a change in terminology and an expansion of the class of veterans protected under the Act. See the Veterans' Rehabilitation and Education Amendments of 1980 (Pub. L. 96–466, 94 Stat. 2207); the Veterans' Compensation, Education, and Employment Amendments of 1982 (Pub. L. 97–306, 96 Stat 441); the Veterans' Compensation and Program Improvements Amendments of 1984 (Pub. L. 98–223, 98 Stat. 43); and the Department of Veterans Affairs Codification Act (Pub. L. 102–83, 95 Stat. 403).

The 1980 amendments substituted the term ''special disabled veteran'' for ''disabled veteran'' and a reference to a service-connected disability for the reference to a disability incurred or aggravated in the line of duty. The 1982 amendments revised the definition of ''special disabled veteran'' so as to include veterans who are not in receipt of compensation from the Veterans Administration because they have elected to receive military retirement pay in lieu thereof. The 1984 amendments expanded the term to include veterans with disability ratings of 10 or 20 percent. Finally, in order to reflect the redesignation of the name of the Veterans' Administration, the 1991 amendments substituted a reference to laws administered by the Secretary of the Department of Veterans Affairs—for the reference to laws administered by the Veterans Administration. For the sake of clarity, the proposal incorporates a subdefinition (at subparagraph (2)) for the term ''serious employment handicap,'' which is derived from the definition of the term contained in 38 U.S.C. 3101).

Section 60–250.2(o) ''Qualified Special Disabled Veteran''

Currently, the regulations define the term as one who is capable of performing a particular job with reasonable accommodation. The proposal parallels the counterpart definition (''qualified individual with a disability'') contained in the Section 503 final rule, which was modeled on the counterpart ADA definition. The proposal specifies that one is ''qualified'' if he or she satisfies the job-related requirements of the position held or sought, and can perform the essential functions of the position with or without reasonable accommodation. It should be noted that, with respect to the application process, an applicant will be deemed qualified if he or she meets eligibility requirements applicable to that process with or without reasonable accommodation.

Section 60–250.2(q) ''Essential Functions''

The proposal incorporates the Section 503 definition of ''essential functions,'' which states that the term refers to the fundamental job duties, but not marginal functions, of the position in question. The current regulations do not contain an analogous definition.

Section 60–250.2(r) ''Reasonable Accommodation''

The proposal incorporates a definition which parallels the Section 503 final rule definition. The current Section 4212 regulations do not contain a definition of the term. However, the adoption of the definition does not represent a change in OFCCP policy. Appendix A should be consulted for general guidance on a contractor's duty to provide reasonable accommodation.

Section 60–250.2(s) ''Undue Hardship''

The proposal adopts the Section 503 final rule definition, which provides that ''undue hardship'' means a significant difficulty or expense related to the provision of an accommodation, as determined in light of specific enumerated factors, including the net cost of the accommodation (after deducting available outside funding) and the overall financial resources of the facility providing the accommodation and of the contractor. Although ''undue hardship'' is not defined in the current regulations, there is a reference to the concept in current § 60–250.6(d). That section, similar to the proposal, states that a contractor must make a reasonable accommodation for a special disabled veteran, unless such accommodation would impose an undue hardship, and that the extent of the accommodation duty is determined based on such factors as business necessity and financial cost. Thus, the proposed definition is consistent with current OFCCP requirements.

Section 60–250.2(t) ''Qualification Standards''

The proposal adopts the definition set forth in the Section 503 final rule. The current regulations do not contain an analogous definition, but the proposed definition does not represent a change in current OFCCP policy.

Section 60–250.2(u) ''Direct Threat''

The definition found in the Section 503 final rule has been incorporated. The definition states that a ''direct threat'' is a significant safety or health risk—as determined based on an individualized assessment in light of specified factors—that cannot be eliminated or reduced by reasonable accommodation. The factors considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur and the imminence of the potential harm. OFCCP's current regulations do not contain a parallel definition. However, OFCCP has relied on essentially the same concept when applying its current regulations. Section 60–250.6(c)(2) of the current regulations requires that when a contractor uses a job qualification requirement which tends to screen out special disabled veterans, the contractor shall demonstrate that such requirement is consistent with business necessity and safe performance of the job in question. In determining whether a particular health or safety risk is sufficient to justify, consistent with the requirements of that section, the exclusion of a special disabled veteran from an employment opportunity, OFCCP currently considers essentially the same factors (the likelihood, seriousness and imminence of potential injury associated with the disability) as are set out by the proposal.

Section 60–250.3 Exceptions to the Definitions of ''Special Disabled Veteran'' and ''Qualified Special Disabled Veteran''

Paragraph (a)(1) establishes an exclusion from the Act's protection with respect to alcoholics whose current use of alcohol prevents performance of the essential functions of the job in question or which would pose a direct threat to property or to health or safety. A parallel exclusionary proviso is contained in the Section 503 final rule at § 60–741.3(a). This Section 503 provision was derived from an amendment to the Rehabilitation Act by Section 512(a) of the ADA providing that the terms ''individual with a disability'' and ''qualified individual with a disability'' do not include alcoholics whose current alcohol use poses such a threat. The revision does not represent a substantive change in the scope of protection for special disabled veterans under Section 4212 or a change in OFCCP policy. Rather, the proposal merely clarifies that when a special disabled veteran's current

alcohol use would prevent performance of the essential functions of the job in question or would pose a direct threat to property or to health or safety, he or she is not protected under the statute. It is axiomatic that such individuals would not be otherwise protected under this proposal (and under the current regulations) because their alcohol use either prevents performance of essential job functions, and thus renders them ''unqualified'' (see definition of ''Qualified special disabled veteran'' at § 60–250.2(o)), or constitutes a direct threat (see definition of ''Direct threat'' at § 60–250.2(u) and Direct threat defense at § 60–250.22). Paragraph (a)(2) clarifies that the contractor has the same obligation to provide a reasonable accommodation for the mental and physical limitations of an alcoholic—in an effort to enable the individual to perform the essential functions of the job in question or to eliminate or reduce the direct threat posed by an alcoholic's current use of alcohol—as the contractor has with respect to any other disabling condition. OFCCP believes that this provision is necessary to clarify that paragraph (a)(1) does not create a blanket exclusion for all alcoholics whose condition presents a direct threat.

Paragraph (b) establishes an exclusion from the Act's protection with respect to currently contagious diseases or infections that is analogous to the exclusion regarding alcoholics set forth in paragraph (a)(1). The provision is patterned after a proviso set out in the Section 503 final rule at § 60–741.3(c) (which was derived from a 1988 amendment to the Rehabilitation Act by the Civil Rights Restoration Act, Public Law 100–259, 29 U.S.C.A. 706(8)(D) (West Supp. 1992)). The proviso does not represent a substantive change in the scope of protection under Section 4212 or a change in OFCCP policy.

Rather, it merely provides a clarification regarding the scope of protection under the Act similar to that set out in paragraph (a)(1).

Paragraph (c)(2) sets out a clarification regarding a contractor's duty to provide reasonable accommodation for a covered veteran with a currently contagious disease or infection which is analogous to paragraph (a)(2) above.

Today's proposal does not adopt the Section 503 final rule's exclusion regarding illegal drug use (see § 60–741.3(a) of those regulations). That provision states that the terms ''individual with a disability'' and ''qualified individual with a disability'' do not include a person who is currently engaging in the illegal use of drugs, when the contractor acts on the basis of such use. The language was derived from an amendment to the definition section of the Rehabilitation Act by Section 512(a) of the ADA (29 U.S.C.A. 706(8)(C)(i) (West Supp. 1992)) which significantly altered the existing coverage provisions for drug users under Section 503. The statutory amendment did not affect Section 4212, and OFCCP declines to adopt an analogous regulatory exclusion with respect to Section 4212.

Section 60–250.4 Coverage and Waivers

Proposed paragraph (a)(1), which sets out the general monetary jurisdiction requirement, is derived from existing § 60–250.3(a)(1), and is substantially identical to that section.

Proposed paragraph (a)(2), which relates to contracts for indefinite quantities, is derived from existing § 60–250.3(a)(2), and is substantially identical to that section.

Proposed paragraph (a)(3) narrows the existing provision regarding the applicability of Part 60–250 to work performed outside the United States. The proposal is consistent with the Section 503 final rule. It makes VEVRAA applicable only to employment activities within the United States, which includes actual employment within the United States and, in limited circumstances, decisions made within the United States regarding employment abroad. Proposed paragraph (a)(4) is identical to current § 60–250.3(a)(4), and proposed paragraph (a)(5) is identical to current § 60–250.3(a)(5).

For the sake of clarity, proposed paragraph (b) consolidates current §§ 60–250.3(b)(1) and (3), which relate to waivers and withdrawal of waivers, respectively. The portion of the paragraph relating to the grant of waivers has been revised to permit the Deputy Assistant Secretary for Federal Contract Compliance Programs to unilaterally grant waivers in the national interest. Currently, § 60–250.3(b)(1) permits the head of an agency to grant such a waiver with the concurrence of the Deputy Assistant Secretary. When this provision was issued, enforcement responsibilities under the Act were carried out by individual Federal compliance agencies as well as by OFCCP. During this period, the granting of waivers was coordinated between these compliance agencies and OFCCP. All compliance responsibility was consolidated into OFCCP in 1978; accordingly, such a requirement is no longer appropriate.

Proposed paragraph (b)(2), which relates to national security waivers, is substantially identical to current § 60–250.3(b)(2). Paragraph (5) of the current rule, '' Facilities not connected with contracts,'' has been integrated as subparagraph (b)(3) to provide clarity and be consistent with Section 503.

Section 60–250.5 Equal Opportunity Clause

This section is derived from current § 60–250.4. The current heading for the section, ''Affirmative action clause,'' has been revised to read ''Equal opportunity clause,'' in order to conform it with the analogous provision contained in the Section 503 final rule (§ 60–741.5) and the regulations implementing Executive Order 11246 (41 CFR 60–1.4). The heading for the clause itself has been revised to reference ''Equal Opportunity'' rather than ''Affirmative Action.'' With respect to paragraph (a)1 (current paragraph (a)), the proposal expands and reorganizes the listing of the prohibited types of disability discrimination to conform to the parallel provisions in the Section 503 final rule, which in turn, were derived from analogous provisions in the EEOC ADA regulations (§ 1630.4). Further, in contrast to the current paragraph (a), the proposal states that the discrimination prohibition applies also to apprenticeship and on-the-job training under 38 U.S.C. 3687. This provision, which is set out in current § 60–250.6(a) Affirmative action policy, practice and procedures, is more properly included in the equal opportunity clause. (The statutory citation has been revised to reflect an amendment which resulted in its redesignation.)

Proposed paragraph (a)2, which is based on current paragraph (b), provides that the contractor shall immediately list its employment openings with the local office of the state employment service system. In contrast to the proposal, current paragraph (b) states that the contractor shall also provide other reports to such local office as may be required. It is not possible to ascertain burden reduction since the requirement was suspended by OMB on January 29, 1982 (47 FR 4258). OFCCP has found that this additional reporting requirement is unnecessary, and therefore, declines to carry the provision forward. Further, current paragraph (b) exempts state and local government agencies covered by Section 4212 from the reporting requirements set out in paragraphs (d) and (e). As discussed below, the reporting requirement in current paragraph (d) is not carried forward by this proposal, and therefore, the reference to that requirement is omitted from the proposed equal opportunity clause.

Proposed paragraph 3 is identical to current paragraph (c). Current paragraph (d) is not carried forward by today's proposal. That paragraph requires that the contractor file, on a quarterly basis, reports with the state employment service system regarding the number of disabled veterans and veterans of the Vietnam era that the contractor hired during the reporting period. This provision was suspended on January 29, 1982 (47 FR 4258) because the reporting requirement had not been approved by OMB under the Paperwork Reduction Act. The suspension was to remain in effect pending final action on the Department's 1980 proposal to amend Part 60–250. A similar annual reporting requirement is currently imposed on contractors covered under Section 4212 pursuant to 41 CFR Part 61–250; that requirement is administered by the Department's Office of the Assistant Secretary for Veterans' Employment and Training. Accordingly, the requirements set out in current paragraph (d) are no longer necessary.

Proposed paragraphs 4 and 5 are identical to current paragraphs (e) and (f), with the exception of a few minor editorial changes. The provisions of current paragraph (g) have been incorporated into proposed paragraph 6. Proposed paragraphs 6 (i), (ii) and (iv), which define terms used in connection with the mandatory listing requirement, are identical to the current paragraphs (h) (1), (2) and (3), with the exception of one minor editorial change. Proposed paragraph 6(iii), which defines the term ''executive and top management,'' is new. Section 702 of the Veterans' Benefits Improvements Act of 1994, Public Law 103–446, permits the exemption of the contractor's ''executive and top management'' positions from the mandatory job listing requirement. Our proposed definition of ''executive and top management'' is based upon the definition of ''executive'' found in the regulations implementing the Fair Labor Standards Act, 29 CFR 541.1, except that we do not propose to adopt the compensation levels specified in subsection (f) of that regulation. Proposed paragraphs 7, 8, 10 and 11, which set out additional contractor requirements, are substantially identical to current paragraphs (i) through (m), respectively, with the exception of a number of editorial changes. For instance, proposed paragraph 10 (current paragraph (l)) makes reference to a ''labor organization'' rather than to a ''labor union.''

Proposed paragraph 9, regarding contractor posting of notices, is similar to current paragraph (k). In conformance with the final Section 503 rule, the posting requirement specifically commits the contractor to ensure that the notices are accessible to applicants and employees who are special disabled veterans. A contractor may make these notices accessible, for example, by having the notice read to a visually disabled individual or by lowering the posted notice so that it may be read by a person in a wheelchair.

Further, current §§ 60–250.20 to 60–250.24 have been consolidated (without substantive change) into this section as paragraphs (b)–(f), respectively. These provisions, which relate to the equal opportunity clause, are more logically included here than as separate sections. Proposed paragraph (d) provides that the contractor may make the equal opportunity clause a part of the contract by simply citing to § 60–250.5. In contrast, current § 60–250.22 states that the equal opportunity clause may be incorporated into the contract by reference. The intent of the proposal is to clarify the current requirement. The proposal does not use the term ''incorporation by reference,'' inasmuch as the regulations of the Office of Federal Register at 1 CFR Part 51 preclude the use of the term in this context.

Subpart B—Discrimination Prohibited

Section 60–250.20 Covered Employment Activities

This section, which lists various types of employment practices to which Part 60–250 applies, is substantially identical to § 60–741.20 of the Section 503 final rule. In turn, the Section 503 regulation is patterned after § 1630.4 of the EEOC regulations. The current Section 4212 regulations contain a similar, but less detailed, listing in the affirmative action clause (§ 60–250.4(a)).

Section 60–250.21 Prohibitions

This section, which sets out in detail the various types of prohibited discriminatory practices, parallels the Section 503 final rule (§ 60–741.21), which, in turn, generally adopts and consolidates the EEOC regulations at § 1630.5 through 1630.11. A number of the prohibitions set out in this section are paralleled in the current Section 4212 regulations or are implicit from those regulations. However, the analogous existing provisions are organized under the rubric of ''affirmative action policy, practices, and procedures'' (§ 60–250.6). As noted above, today's proposal reorganizes the regulations so as to clearly define which obligations are components of the affirmative action program requirement, and thus applicable only to contractors that employ 50 or more persons and hold a contract valued at $50,000 or more (*see* discussion of Subpart C below).

The introductory sentence of this section, which states that ''discrimination'' includes the acts described in proposed §§ 60 250.21 and 60–250.23, is patterned after the final sentence of § 1630.4 of the EEOC regulations. Paragraph (a), which sets out a general prohibition regarding disparate treatment discrimination, is patterned after § 60–741.21(a) of the Section 503 regulations. The Section 503 final rule has no direct counterpart in the EEOC regulations, but rather was proposed to clarify that disparate treatment is one form of prohibited discrimination under those regulations. Paragraphs (b) through (h), which specify other types of prohibited discrimination, are new to the Section 4212 regulations and parallel their EEOC and Section 503 final rule counterparts, except as discussed below.

Proposed paragraph (f)(1), which provides that it is unlawful to fail to make reasonable accommodation, unless the contractor can demonstrate an undue hardship, is substantially similar to current § 60–250.6(d). As stated in the discussion in the EEOC's interpretative guidance appendix, the contractor is not required to provide a reasonable accommodation unless the special disabled veteran informs the contractor that an accommodation is needed. However, if an employee who is a known special disabled veteran is having difficulty performing his or her job, the contractor may inquire whether the employee is in need of a reasonable accommodation. (This contrasts with the duty of a contractor covered by the written affirmative action program requirement; such a contractor must inquire about the need for an accommodation in that circumstance. See proposed § 60–250.44(d).) Further, although proposed paragraph (f)(2), which states that it is unlawful to deny employment opportunities based on the need to make a reasonable accommodation, is not paralleled in the current regulations, that obligation is implicit in current § 60–250.6(d).

The first sentence of proposed paragraph (g)(1)—which prohibits the use of selection criteria that screen out special disabled veterans or veterans of the Vietnam era, unless the selection criteria are shown to be job-related and consistent with business necessity—is essentially the same as the requirements contained in parallel provisions of the Section 503 final rule (§ 60–741.21(g)(1)) and the EEOC regulation (§ 1630.10), as well as the current VEVRAA regulation

(§ 60–250.6(c)(2)). The last sentence in that paragraph, which limits the purposes for which a contractor may rely on a covered veteran's military record, is substantially similar to language contained in current § 60–250.6(b). Paragraph (g)(2) provides that the Uniform Guidelines on Employee Selection Procedures (which, among other things, set out certain requirements for validating employee selection procedures which adversely affect particular race, sex or ethnic groups) do not apply to Part 60–250. An analogous statement is made by EEOC in its appendix discussion of the parallel EEOC regulation (§ 1630.10).

Paragraph (h) requires that the contractor administer employment tests to eligible applicants or employees with impaired sensory, manual, or speaking skills in a format that does not require the use of the impaired skills, unless such skills are the factors that the test purports to measure. This provision is substantially identical to the counterpart provision in the Section 503 final rule, which, in turn, is derived from § 1630.11 of the EEOC regulations.

Paragraph (i), compensation, is derived from current § 60–250.6(e), and (with the exception of some editorial changes) is substantially similar to that section.

Section 60–250.22 Direct Threat Defense

This section clarifies that a contractor may exclude from employment opportunities persons who cannot perform essential functions without posing a direct health or safety threat to themselves or others. This provision is substantially identical to the parallel provision in the Section 503 final rule (§ 60–741.22), which is derived from, and substantially similar to, § 1630.15(b)(5) of the EEOC regulations.

Section 60–250.23 Medical Examinations and Inquiries

This section incorporates the Section 503 final rules' provisions regarding prohibited and permitted medical examinations and inquiries (§ 60–741.23), which, in turn, are patterned after the counterpart provisions in the EEOC's regulations (§§ 1630.13 and 1630.14).

The provisions contained in this section generally have no counterpart in the current Section 4212 regulations. In some cases, the provisions in this section significantly contrast with the current regulations. In this regard, proposed paragraph (b)(2) permits the contractor to require an employment entrance medical examination or inquiry after making an offer of employment to a job applicant and to condition an offer of employment on the results of such an examination or inquiry if all similarly situated employees are subjected to such an examination or inquiry, and proposed paragraph (b)(3) permits a contractor to require a job-related medical examination or inquiry of an employee. Proposed paragraph (b)(5) specifies that examinations conducted pursuant to paragraph (b)(2) need not be job-related; however, if a special disabled veteran is screened out from an employment opportunity as a result of such examination or as the result of another examination, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity. In contrast, the current Section 4212 regulations do not limit the use of medical examinations to the post-employment-offer context or require that examinations or inquiries of employees be job-related. Rather, current § 60–250.6(c)(3) states that a contractor may conduct a pre-employment medical examination, provided that the results of such examination are used consistently with other requirements in § 60–250.6 (Affirmative action policy, practices, and procedures). However, similar to proposed paragraph (b)(5), current § 60–250.6(c)(2) provides that the contractor may not use physical or mental qualification requirements to screen out qualified disabled veterans, unless such requirements are shown to be job-related and consistent with business necessity.

Proposed paragraph (c), Invitation to self-identify, references § 60–250.42, which specifies that a contractor shall invite applicants to self-identify as being covered by the Act and wishing to benefit under the affirmative action program. Proposed paragraph (d) specifies, with certain limited exceptions, that information obtained under this section shall be kept confidential.

Section 60–250.24 Drugs and Alcohol

Proposed paragraph (a), which sets out permitted types of contractor practices relating to the regulation of workplace drug and alcohol use, and proposed paragraph (b), which governs the permissible use of drug testing, are identical to the revised Section 503 regulation (60–741.24), which, in turn, is patterned after the EEOC regulations at §§ 1630.16(b) and (c), respectively. As discussed below, paragraphs (a) and (b) contain minor technical changes (as well as a number of editorial changes) from the EEOC rule. This section is not paralleled by any provisions contained in the current Section 4212 regulations. Sections 1630.16(b)(5) and (6) of the EEOC regulations state that employees may be required to comply with the regulations of the Departments of Defense and Transportation and of the Nuclear Regulatory Commission regarding alcohol and drugs. In contrast, proposed paragraphs (a)(5) and (a)(6) state that employees also may be required to comply with similar regulations of other Federal agencies.

Paragraph (b)(3) states that any medical information obtained from a drug test, except information regarding the illegal use of drugs, is subject to the requirements of §§ 60–250.23(b)(5) and (d). In turn, proposed § 60–250.23(b)(5) states that the contractor must demonstrate that criteria which are used to screen out special disabled veteran applicants or employees are job-related and consistent with business necessity; and proposed § 60–250.23(d) provides for certain confidentiality requirements with regard to medical information. The parallel EEOC regulation (§ 1630.16(c)(3)) fails to reference medical confidentiality requirements, but the EEOC appendix discussion regarding the section notes that the information in question should be treated as a confidential medical record.

Section 60–250.25 Health Insurance, Life Insurance and Other Benefit Plans

Proposed paragraphs (a), (b), (c) and (e) of this section provide that the contractor may administer benefit plans in a manner which is not inconsistent with state law, or administer a benefit plan that is not subject to state laws that regulate insurance, provided that such activities are not used as a subterfuge to evade the purposes of Part 60–250. These provisions are substantially identical to the Section 503 final rule at § 60–741.25. Paragraphs (a), (b), (c) and (e) of those regulations, in turn, are patterned after EEOC's regulations at § 1630.16(f)(1)–(f)(4), respectively. Proposed paragraph (d), which provides that the contractor may not deny a qualified special disabled veteran equal access to insurance based on disability alone if the disability does not pose increased risks, is derived from the EEOC appendix discussion regarding § 1630.16(f).

Subpart C—Affirmative Action Program

Subpart C is derived from §§ 60–250.5 (Applicability of the affirmative action program requirement) and 60–250.6 (Affirmative action policy, practice, and procedures) of the current Section 4212 regulations. This subpart revises and reorganizes those sections to incorporate only obligations which are applicable to

contractors with a written affirmative action program requirement, i.e., those that employ 50 or more employees and hold a contract of $50,000 or more. See proposed § 60–250.40(a). Provisions currently in § 60–250.6 that are applicable to all covered contractors have been incorporated into proposed Subparts B (Discrimination Prohibited) or E (Ancillary Matters).

Section 60–250.40 Applicability of the Affirmative Action Program Requirement

Paragraph (a), which has no parallel in the current Section 4212 regulations, clarifies the application of the requirements of Subpart C. Paragraphs (b) and (c)—which specify the contractor's duties with regard to the preparation and maintenance of its affirmative action program (AAP), and the updating of its AAP, are derived from current §§ 60–250.5(a) and (b), respectively. Minor clarifying changes or organizational changes have been made with respect to these provisions. For instance, current § 60–250.5(a) states that the AAP shall set forth the contractor's policies, practices and procedures ''in accordance with § 60–250.6 of this part.'' The reference to this particular section has been omitted to clarify that the contractor's AAP should address all relevant practices under Part 60–250, not only those that relate to this particular section. Current § 60–250.5(a) also states that contractors presently holding contracts shall update their AAPs within 120 days of the effective date of Part 60–250. This provision has been incorporated into a separate effective date section (§ 60–250.86). Current § 60–250.5(d), which sets out the ''self-identification'' procedures, has been incorporated with revisions at proposed § 60–250.42.

Paragraph (d) states that the contractor shall generally submit its AAP within 30 days of a request by OFCCP and that it shall also make the document promptly available on-site upon such request. These provisions, which are not contained in the current regulations, have been included in order to help ensure that OFCCP has access to the contractor's AAP as soon as needed.

Section 60–250.41 Availability of Affirmative Action Program

With the exception of some stylistic differences, this section, which provides that the AAP shall be available to any applicant or employee at a location and time which shall be posted at each establishment, is identical to current § 60–250.5(c).

Section 60–250.42 Invitation to Self-identify

On _____, 1996, OFCCP published (_____ F.R. _____) an interim rule amending § 60–250.5(d) of the current regulations relating to invitations to self-identify. The purpose of the interim rule was to conform the invitation to self-identify requirement under VEVRAA with the requirement contained in the new Section 503 final rule (_____ F.R. _____).

This proposal mirrors the VEVRAA interim rule and the Section 503 final rule. Paragraph (a) requires the contractor, after making an offer of employment and before the applicant begins his or her employment duties, to invite applicants to self-identify in order to benefit from the contractor's affirmative action program. In addition, under paragraphs (b) and (c) a pre-offer invitation is permitted only in two limited circumstances: if the invitation is made when the contractor actually is undertaking affirmative action at the pre-offer stage; and if the invitation is made pursuant to a Federal, state or local law requiring affirmative action for special disabled or Vietnam era veterans. This approach is consistent with § 1630.14(b) of the EEOC's regulations, and the EEOC's October 10, 1995, ''ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations.''

Paragraph (d) of the proposed rule requires that the invitation inform the individual that the request to benefit under the contractor's affirmative action program may be made immediately or at any time in the future. This is intended to help ensure that the individual is aware that he or she is not precluded from making the request at any time in the future merely because an initial request was made or because he or she failed to make the request immediately in response to the invitation. For example, a special disabled veteran simply may not choose to self-identify before beginning work, but may wish to do so later.

The contractor may develop its own invitation for this purpose, although an acceptable form of such invitation is set forth in Appendix B.

Section 60–250.43 Affirmative Action Policy

This section, which sets out the contractor's fundamental affirmative action obligations, clarifies that such obligations include a duty to refrain from discrimination; that the contractor is required to take affirmative action efforts with respect to all levels of employment, including the executive level; and that such requirements apply to all employment activities. This provision is substantially similar to current § 60–250.6(a) (which does not contain the reference to the prohibition against discrimination). The remaining paragraphs of current § 60–250.6 are comprised of the specific required affirmative action policy, practices and procedures. As discussed below, these provisions have been incorporated with modification into proposed § 60–250.44.

Section 60–250.44 Required Contents of Affirmative Action Programs

The provisions contained in this section were derived from existing § 60–250.6, and have been organized, as stated in this section's introductory sentence, to set out the minimum required AAP ingredients. Although a number of the requirements are also applicable to contractors that do not have a written AAP obligation, i.e., those contractors that do not employ 50 or more employees and hold a contract of $50,000 or more, all requirements applicable to AAP contractors are included in this section for the sake of clarity. In addition, this section sets out suggested affirmative action activities that the contractor is encouraged to undertake in order to comply with the specified minimum affirmative action requirements. The contractor has discretion in undertaking these suggested activities or other activities in satisfying the mandatory requirements. In some cases, obligations that are not mandatory under the current regulations have been made mandatory in this proposal and vice versa.

Paragraph (a) states that the contractor's AAP shall include an equal opportunity policy statement and specifies the contents—both suggested (relevant information about the contractor's policy) and required (notification that the contractor is obligated, as specified in proposed § 60–250.69, to refrain from harassment or intimidation). The proposal is intended as a clarification of an existing regulatory provision. Current § 60–250.6(g) states that the contractor should adopt, implement and disseminate an equal opportunity policy (through various enumerated methods), but does not expressly require that it be included in the contractor's AAP or indicate what should be contained in the statement.

With the exception of its third sentence, paragraph (b), which specifies that the contractor must ensure that its personnel processes provide for careful consideration of the job qualifications of known special disabled veterans or veterans of the Vietnam era, is substantially similar to existing § 60–

250.6(b). The third sentence of the paragraph, which states that the contractor shall ensure that its personnel processes are free from stereotyping, is derived from current § 60–250.6(i)(2), except that the requirement is made mandatory in the proposal, and is a suggested method of compliance in the current regulation. OFCCP believes that this requirement is central to the Act's affirmative action obligation, and therefore should be mandatory.

Paragraphs (c)(1) and (2) are substantially similar to current §§ 60–250.6(c)(1) and (2), respectively. Like current § 60–250.6(c)(1), proposed paragraph (c)(1) requires that the contractor periodically review all physical and mental job qualification standards to ensure that qualification standards that tend to screen out special disabled veterans are job-related for the position in question and consistent with business necessity. In contrast to the proposal, the current regulation also states that such standards must be consistent with safe performance of the job. It is unnecessary to incorporate the reference to ''safe performance'' in the proposal because that concept is subsumed by the concept of business necessity. Proposed paragraph (c)(1), also in contrast with the current regulation, clarifies that the contractor must ensure that such exclusionary job standards concern essential functions of the job in issue. This clarification is based on the counterpart provision in the Section 503 final rule (§ 60–741.44(c)(1)), which, in turn, is based on the EEOC's interpretation of analogous requirements under the ADA. (See the discussion regarding § 1630.10 in the appendix to the ADA's regulations.) Proposed paragraph (c)(2) requires that the contractor demonstrate that its use of physical or mental selection standards which tend to screen out qualified special disabled veterans is job-related and consistent with business necessity. This paragraph contains the same type of modifications that have been incorporated into proposed paragraph (c)(1).

Paragraph (c)(3) incorporates, for the sake of clarity, a statement similar to the statement in proposed § 60–250.22 that the contractor may exclude from employment opportunities persons who pose a direct threat to health or safety.

Paragraph (d) requires the contractor to make reasonable accommodation for a known otherwise qualified special disabled veteran, unless it can demonstrate an undue hardship on the operation of its business. The proposal is similar to current § 60–250.6(d) (first sentence), except that it clarifies that the accommodation duty is owed only to an ''otherwise qualified'' special disabled veteran. As stated in proposed Appendix B, a special disabled veteran is ''otherwise qualified'' if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions. The second sentence of the current regulation, which sets out factors that are relevant to the determination of the extent of the contractor's accommodation obligation, is not incorporated in proposed paragraph (d). A similar more detailed listing of factors is included in the proposed definition of ''undue hardship'' (§ 60–250.2(s)(2)). Proposed paragraph (d) also requires that where an employee who is a known special disabled veteran is having difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation. The current regulations do not contain a parallel provision. This requirement is an essential component of the contractor's affirmative action duty. Absent such a requirement, the contractor would be free to take adverse action against a known special disabled veteran (who might be otherwise qualified) merely because the veteran failed to request an accommodation. A special disabled veteran who is in need of an accommodation may fail to seek out an accommodation for any number of reasons; for instance, he or she may not perceive the need for an accommodation or may be unaware of his or her right to obtain an accommodation. Because the provision applies only to an employee the contractor knows to be a special disabled veteran (that is, in the situation where it is reasonable to conclude that a performance problem may be related to a veteran's disability) and does not require the contractor to speculate about the need for accommodation in equivocal situations, OFCCP believes that it fairly balances the rights of both the veteran and employer.

Paragraph (e) provides that the contractor must develop procedures to ensure that its employees are not harassed because of their disability or Vietnam era veteran status. The current regulations, at § 60–250.6(h)(1)(ii), contain a similar provision which is not mandatory (supervisors ''should'' be advised that the contractor is obligated to prevent harassment). Upon reconsideration, OFCCP believes that harassment is a sufficiently important issue to warrant mandatory affirmative steps to ensure that it does not occur.

Paragraph (f) provides that the contractor has a duty to take actions such as outreach and recruitment activities to effectively recruit special disabled veterans and veterans of the Vietnam era as are appropriate in light of the circumstances, including the contractor's size and resources and the extent to which existing practices are adequate. The paragraph also sets out a listing of appropriate activities that contractors should take in this regard, and specifies that the contractor has discretion in undertaking these or other activities. This section is generally consistent with current § 60–250.6(f), but incorporates a number of clarifying modifications. Some of the suggested outreach and recruitment activities listed in the current regulations concern policies regarding the internal dissemination of the contractor's policy, and therefore have been incorporated into proposed § 60–250.44(g), which addresses that subject.

Also, the proposal consolidates into paragraph (f) (without substantive change) some portions of current § 60–250.6(f) (positive recruitment and external dissemination of policy), and § 60–250.6(i) (development and execution of AAPs). Proposed paragraph (f)(1), which states that the contractor should obtain assistance from specified types of recruitment sources, is derived from current § 60–250.6(f)(4). That provision has been edited for clarity and references to recruitment sources have been updated. Proposed paragraph (f)(2), which states that the contractor should conduct formal briefing sessions with recruitment source representatives, is derived from current § 60–250.6(i)(4). Proposed paragraph (f)(3), which relates to recruitment efforts at educational institutions, consolidates current §§ 60–250.6(i)(7) and (8). Proposed paragraph (f)(5), which specifies that special disabled veterans and veterans of the Vietnam era should participate in outreach and recruitment activities, is based on current §§ 60–250.6(i)(6).

Proposed paragraph (f)(8) establishes a new suggested recruitment activity (which parallels § 60–741.44(f)(7) of the Section 503 final rule) that has no counterpart in the current regulations. That paragraph states that the contractor, in making hiring decisions, should consider applicants who are known special disabled veterans or veterans of the Vietnam era for other positions for which they may be qualified when the position applied for is unavailable. OFCCP believes that such a practice will be effective in helping to maximize the employment

opportunities of special disabled veterans and veterans of the Vietnam era. In many cases, the consideration of applicants for such alternative jobs will not place any added burdens on the contractor's personnel system (because, for instance, that practice is already standard for applicants in general). Indeed, this practice may frequently benefit a business inasmuch as it can obviate the need to seek additional qualified candidates.

Proposed paragraph (g)(1), which sets out requirements which are complementary to proposed paragraph (f), states that the contractor must develop internal procedures to assure supervisory, management and other employee cooperation and participation in the contractor's efforts to implement its affirmative action obligation. Like paragraph (f), paragraph (g)(2) lists suggested procedures that the contractor should undertake to communicate its affirmative action obligation internally. For the most part, the provisions in these paragraphs are derived from existing § 60–250.6(g). However, in contrast to the proposal, that section provides that the contractor's duty to engage in internal dissemination activities is not mandatory. Upon reconsideration, OFCCP concludes, as stated in proposed paragraph (g)(1) itself, that the contractor's outreach program will not be effective without internal support, which, in turn, requires that the contractor engage in reasonable efforts to disseminate its affirmative action policy to all employees. Accordingly, OFCCP believes that the internal communication duty should be mandatory. Further, paragraph (g)(1) incorporates a clarification (like that contained in proposed paragraph (f)) that the scope of the contractor's efforts shall depend on all the relevant circumstances.

Moreover, as noted above, relevant provisions from current § 60–250.6(f) are consolidated (without substantive change) into this paragraph as well: proposed paragraph (g)(1) combines provisions from current §§ 60–250.6(f)(1) and (g) (introductory sentence). Proposed paragraph (g)(2)(ii), which states that the contractor should inform all employees and prospective employees of its affirmative action policy and schedule employee meetings to discuss the policy, is derived from current §§ 60–250.6(f)(3) and (g)(4). Current § 60–250.6(g)(9) states that the contractor, as a suggested internal dissemination procedure, should post its affirmative action policy, including a statement that employees and applicants who are special disabled veterans are protected from disability-related harassment, on company bulletin boards. Today's proposal incorporates this provision as a mandatory requirement at § 60–250.44(a).

Paragraph (h), which requires the contractor to implement an audit system to measure the effectiveness of its AAP and to undertake necessary action to bring its program into compliance, is derived (without substantive modification) from current § 60–250.6(h)(3) (where the provision is set out as one of several specified responsibilities of the contractor's affirmative action manager). In contrast to the current regulation, today's proposal sets out the provision as a separate subsection in order to emphasize its importance. Further, the proposal clarifies that the requirement is mandatory.

Paragraph (i) provides that the contractor shall designate an official of the company as an affirmative action manager and provide that individual with necessary top management support and staff. This provision is derived from current § 60–250.6(h). In view of the importance of designating an official as responsible for the implementation of the contractor's AAP, the proposal, in contrast to the current regulation, provides that the contractor's duty in this regard is mandatory. Additionally today's proposal does not incorporate the current regulation's listing of activities in which the affirmative action manager should engage, inasmuch as such a listing would unnecessarily duplicate other provisions contained in the proposal.

Paragraph (j), which is based on current § 60–250.6(i)(3), requires the contractor to train all employees involved in the personnel process to ensure that the contractor's AAP commitments are implemented. Because of the importance of this requirement, the proposal, in contrast to the current regulations, specifies that it is mandatory and sets it out as a separate subsection.

Subpart D—General Enforcement and Complaint Procedures

As stated above, this subpart expands the current provisions contained in Subpart B of the current regulations and conforms many of those provisions to the parallel provisions contained in the regulations implementing Executive Order 11246 (41 CFR Part 60–1, Subpart B), which have been incorporated in the Section 503 final rule. Upon careful consideration, OFCCP has concluded that in the specific instances where the regulations are conformed there is no reason to apply different procedures under the Act, the Executive Order or Section 503. Further, this subpart incorporates one stylistic change throughout. The current regulations in some instances make reference to violations of (or compliance with) the affirmative action clause (i.e., equal opportunity clause) and/or to violations of (or compliance with) the Act or this part. For the sake of consistency, the proposal generally makes reference to violations (or compliance with) ''the Act or this part.''

OFCCP recognizes that differences and disputes about the requirements of the Act and the regulations may arise between contractors and special disabled veterans and veterans of the Vietnam era as a result of misunderstandings. Such disputes frequently can be resolved more effectively through informal negotiation or mediation procedures, rather than through the formal enforcement process set out in the regulations. Accordingly, OFCCP will encourage efforts to settle such differences through alternative dispute resolution, provided that such efforts do not deprive any individual of legal rights under the Act or the regulations. (See the Department of Labor's policy on the use of alternative dispute resolution. 40 FR 7292, Feb. 28, 1992.)

Section 60–250.60 Compliance Reviews

Paragraph (a) of this section clarifies existing regulatory authority for OFCCP to conduct compliance reviews with regard to contractors' implementation of their affirmative action obligations, and provides that the review shall consist of a comprehensive analysis of all relevant practices, and that recommendations for appropriate sanctions shall be made. Paragraph (b) specifies that where deficiencies are found, reasonable conciliation efforts shall be made pursuant to § 60–250.62. Paragraph (c) provides that, during a compliance review, OFCCP will verify whether the contractor has properly filed its annual Veterans' Employment Report (VETS–100) with the Assistant Secretary for Veterans' Employment and Training (OASVET) (as required under 41 CFR Part 61–250), and that OFCCP will notify OASVET if the contractor has not done so.

Paragraphs (a) and (b) have no parallel in the current section 4212 regulations, but are generally patterned after selected portions of the compliance review provisions of the regulations implementing Executive Order 11246 (41 CFR 60–1.20(a) and (b), respectively). However, the statement

authorizing OFCCP to conduct compliance reviews in proposed paragraph (a), which is included for the sake of clarity, is a new provision and is not contained in the Executive Order regulations. Proposed paragraphs (a) and (b) are consistent with OFCCP's existing authority under Section 4212 and § 60–250.25 of the current regulations, and with current OFCCP practice.

Proposed paragraphs (a) and (b) are generally consistent with the relevant provisions of the 1980 final rule at § 60–1.20. The final rule, however, does not contain an express statement regarding OFCCP's authority. Further, in contrast to the proposal, the 1980 final rule, in §§ 60–1.20(a) and (b), discusses various technical internal agency procedures regarding the conduct of compliance reviews (e.g., noting in paragraph (a) that compliance reviews normally are conducted in three stages). Upon further consideration, OFCCP has determined that it is unnecessary to incorporate these procedural statements into today's proposal.

Moreover, today's proposal does not adopt the 1980 final rule's preaward compliance reviews provision (§ 60–1.21), which is essentially a modified version of the preaward procedures contained in the Executive Order regulations (§ 60–1.21(d)). The current Section 4212 regulations do not contain a similar provision. In substance, the 1980 final rule would have required that all prospective nonconstruction contractors and subcontractors seeking contracts exceeding $1 million be subject to a compliance review under the Act before the award of the contract. The 1980 final rule also would have specified criteria that OFCCP should apply in establishing priorities for the conduct of preaward reviews, and would have established requirements regarding the clearance of the contract. OFCCP has determined not to adopt a preaward compliance review procedure in today's proposal because it believes, upon reconsideration, that the diversion of necessary resources to support such a compliance initiative would unduly impair its ability to effectively conduct other compliance activities.

Paragraph (c) has no parallel in the current regulations. The proposal, however, reflects current OFCCP practice.

Section 60–250.61 Complaint Procedures

Paragraph (a), a provision not paralleled in the current regulations, cross-references OFCCP's and EEOC's procedural regulations at 41 CFR Part 60–742 which govern the processing of complaints cognizable under both Section 503 and the ADA, and specifies that complaints filed under Part 60–250 that are cognizable under Section 503 and the ADA will be processed in accordance with those regulations. All other procedural provisions contained in paragraphs (b) through (f) of this proposed section shall be applicable with regard to the processing of such complaints as well. The procedural regulations require, among other things, that OFCCP (acting as EEOC's agent) process and resolve complaints of employment discrimination based on disability for purposes of the ADA (as well as for Section 503) when there is jurisdiction under both statutes. In doing so, OFCCP is required to apply legal standards which are consistent with the substantive legal standards applied under the ADA. (It should be understood that OFCCP has no enforcement authority under the ADA beyond that specified in the procedural regulations.) The purpose of the proposal is to ensure that an aggrieved individual's rights under the ADA are preserved, including the right to file a private lawsuit. (Section 4212 does not provide for a private right of action. The complaint procedures provide the only means by which an individual may seek redress for a violation of the Act.)

The proposal drops the provision in current § 60–250.25 that the Director of OFCCP shall be primarily responsible for the investigation of complaints and other matters as necessary to ensure the effective enforcement of the Act. The intent of this provision, which was included in the regulations prior to the delegation of all compliance authority under Section 4212 to OFCCP, was to ensure that OFCCP had primary control with regard to the administration of the Act. The provision is no longer necessary. The 1980 final rule would have established similar provisions in § 60–1.27 to state that the Director may assume jurisdiction over any matter when necessary to the enforcement of Section 4212, and that the Director may reconsider any pending matter under the Act. OFCCP concludes that these provisions are unnecessary, and thus declines to incorporate them in today's proposal. Further, the provision from the 1980 final rule (§ 60–1.48) that states that a contractor which has complied with the recommendations or orders of OFCCP which it believes to be erroneous may request a hearing and review of the alleged erroneous action, is unnecessary and is not carried forward. That provision relates to preaward compliance reviews (specifically, it is a means by which a contractor can avoid a contract ''pass over'' while still contesting OFCCP's review findings) and is not needed because, as stated above, OFCCP will not be conducting preaward reviews under the Act.

Paragraph (b), which is derived from current § 60–250.26(a), specifies that a person may, personally or by an authorized representative, file a written complaint alleging an individual or class-wide violation of the Act or the regulations within 300 days of the alleged violation with OFCCP (at a specified location) or with the Veterans' Employment and Training Service (VETS) directly or through the Local Veteran's Employment Representative (LVER) or his or her designee at the local state employment service office. The provision also specifies that such parties will assist veterans in preparing complaints and will promptly refer them to the OFCCP. In contrast to the proposal, current § 60–250.26(a) provides that an individual may file a complaint only with VETS (current § 60–250.26(a) is otherwise identical in substance to the proposal with regard to the responsibilities of LVERs and the state employment service). OFCCP's proposal is based on an amendment to the complaint procedure set out in Section 4212(b) by section 509 of the Veterans' Rehabilitation and Education Amendments of 1980. Public Law 96–466, 94 Stat. 2207. The amendment deleted from Section 4212(b) a provision that specified that complaints may be filed with the Veterans' Employment Service and promptly referred to the Secretary of Labor, and substituted a provision that specifies that complaints may be filed with the Secretary, who shall promptly investigate such complaints and take appropriate action. The intent of this amendment was to permit the Secretary of Labor the flexibility to designate a representative, in addition to VETS, to receive complaints directly from aggrieved individuals. See H.R. Rep. No. 1154, 96th Cong., 2d Sess. 77 (1980). The Department has determined, in view of OFCCP's current role in processing complaints, that the agency should act in that capacity. (The Secretary previously delegated authority for enforcement of Section 4212 to the Department's Employment Standards Administration, the parent agency of OFCCP. 52 FR 48466, December 22, 1987.)

The current regulation requires that the complaint be filed within 180 days of the alleged violation, and does not indicate the location where the complaint should be filed. The proposal adopts a 300-day filing deadline, which

is consistent with the complaint-filing deadline in the Section 503 final rule. The current provision, unlike the proposal, does not specify the office at which the complaint may be filed. The location for filing is included to assist the complainant.

Further, the proposal does not incorporate the internal review procedure contained in current § 60–250.26(b) or in the 1980 final rule (§ 60–250.23(f)). The current regulation provides that, when an employee of a contractor files a complaint, and the contractor has an internal review procedure, the contractor will be permitted 60 days to process the complaint under that procedure. If there is no resolution of the matter which is satisfactory to the complainant within 60 days, the complaint then is processed by OFCCP. The 1980 final rule would have provided that the complaint may be referred to the contractor for internal review with the employee's consent. OFCCP has found that the current procedure has not been particularly effective in providing expeditious and satisfactory complaint resolutions. Therefore, OFCCP has decided not to carry forward either a mandatory or voluntary complaint referral procedure. Although there is no regulatory requirement regarding informal resolution of complaints, OFCCP nevertheless strongly encourages parties to attempt to do so whenever possible.

Paragraph (c)(1) specifies the required contents of complaints, and generally is consistent with current § 60–250.26(c). In contrast to the current regulation, the proposal specifies that the complainant must state the pertinent dates concerning the alleged violation (the information need only be provided to the best of the complainant's recollection). Also, the description of the documentation that the individual must submit to show that he or she is a special disabled veteran or a veteran of the Vietnam era has been updated (see proposed paragraph (b)(1)(iii)). The proposal drops current § 60–250.7, which specifies the type of documentation that a complainant must submit regarding his or her special disabled status, because it is unnecessarily duplicative of proposed paragraph (b)(1)(iii).

Paragraph (c)(2) establishes new Section 4212 procedures regarding third party complaints. The procedures are patterned after the analogous provisions of the Section 503 final rule (§ 60–741.61(c)(2)), and the EEOC's procedural regulations applicable to the ADA (29 CFR 1601.7(a)). This paragraph specifies that a third party complaint need not identify by name the person on whose behalf it is filed, although the person filing the complaint shall provide identifying information to OFCCP and other information required under paragraph (c)(1); and that OFCCP shall verify the authorization of the complaint by the person on whose behalf it is made, who may request that his or her identity remain confidential. The purpose of these provisions is to help prevent retaliation against persons seeking to exercise rights protected under the Act by preserving the confidentiality of the complaint process while also ensuring both that OFCCP has sufficient information to properly investigate the complaint and that the complaint is properly authorized. The 1980 final rule would have provided (at § 60–250.23(c)) that signed third party complaints will be accepted whether or not the third party signing the complaint is the authorized representative. Upon reconsideration, OFCCP believes that authorization to file a complaint is an appropriate requirement.

Paragraph (d), which establishes procedures for handling a complaint which contains insufficient information, is substantially identical to current § 60–250.26(d).

Paragraph (e), which is based on the first sentence of current § 60–250.26(e), provides that the Department of Labor shall promptly investigate complaints. OFCCP has determined not to incorporate the statement contained in the second sentence of the current regulation regarding the contents of a complete case record, inasmuch as this is primarily an internal procedural matter, and thus need not be a part of the regulations.

Paragraph (f)(1), which states that the complainant and the contractor shall be notified where the complaint investigation finds no violation or the Deputy Assistant Secretary decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor, is consistent with the first sentence of current § 60–250.26(g). However, the proposal does not incorporate the final sentence of that provision, which states that the complainant may request that the Deputy Assistant Secretary review the finding or decision. Instead, the paragraph incorporates a provision which specifies that the Deputy Assistant Secretary, on his or her own initiative, may reconsider the finding or decision. OFCCP has found that the existing review procedure has not been productive and has therefore determined to drop the procedure.

Paragraph (f)(2) provides that the Deputy Assistant Secretary will review all determinations of no violation that involve complaints that are not also cognizable under the ADA. This will help ensure accuracy of determinations regarding claims raised by persons who would not have an opportunity to seek relief in Federal court. OFCCP believes that the proposed review procedure will provide an adequate check on its no violation findings and decisions not to initiate proceedings.

Paragraph (f)(3) sets out notification procedures regarding the Deputy Assistant Secretary's reconsideration of investigative findings.

Paragraph (f)(4), which states that the contractor shall be invited to participate in conciliation pursuant to § 60–250.62 where there is a finding of violation, is substantially similar to the first sentence of current § 60–250.26(g)(2). As discussed immediately below, the proposal incorporates (with modification) other portions of that section into a separate section on conciliation agreements.

Section 60–250.62 Conciliation Agreements and Letters of Commitment

The purpose of this section is to conform the Section 4212 regulatory procedures regarding conciliation agreements and letters of commitment to the substance of the parallel procedures contained in the Executive Order regulations (41 CFR 60–1.33). Proposed paragraph (a), which incorporates without substantive change paragraph (a) of the Executive Order regulation, requires OFCCP, where it finds a material violation of the Act, to enter into a written agreement with the contractor which provides for appropriate remedial action, provided that the contractor is willing to do so and OFCCP determines that settlement on that basis (rather than referral for potential enforcement) is appropriate. The proposal is conceptually similar to the corresponding current Section 4212 regulation (§ 60–250.26(g)(2)), but incorporates a number of clarifying changes which reflect current OFCCP practice under Section 4212. For instance, although the current regulation, like the proposal, provides for the use of written settlement agreements under which the contractor shall commit to take corrective action, it does not: use the term ''conciliation agreement''; expressly state that ''make whole remedies'' shall be addressed by the agreement; or expressly require that OFCCP determine that settlement through such an agreement (rather than referral for potential enforcement) is appropriate. The last sentence of the proposal, which is derived from the current Section 4212 regulation,

provides that the agreement shall specify the date for the completion of the needed remedial action, which shall be the earliest date possible.

However, the proposal does not incorporate the provision from the current regulation which states that the contractor may be considered in compliance on condition that the commitments contained in the agreement are kept. Further, the proposal does not incorporate a related provision from the 1980 final rule. The 1980 rule, at § 60–1.20(c), states the taking of corrective actions by the contractor pursuant to a conciliation agreement does not preclude OFCCP from making future determinations of noncompliance where OFCCP either finds that the contractor's actions are not sufficient to achieve compliance, or it uncovers violations not previously revealed in an investigation. Upon reconsideration, OFCCP concludes that these provisions are unnecessary and should not be incorporated into the regulations, because the concerns they reflect are addressed by general legal principles.

Paragraph (b), which clarifies the distinction between conciliation agreements and letters of commitment, is incorporated without substantive change from paragraph (b) of the Executive Order regulation (41 CFR 60–1.33(b)).

The 1980 final rule (at § 60–1.26(a)) is substantially similar to proposed paragraph (a), but would have made a number of technical revisions that are not reflected in the proposal (e.g., paragraph (c) of the final rule clarified when a conciliation agreement becomes effective). OFCCP has determined not to incorporate these technical revisions, inasmuch as relevant guidance is already provided in OFCCP's Federal Contract Compliance Manual.

Section 60–250.63 Violation of Conciliation Agreements and Letters of Commitment

This section, which specifies the required notification and enforcement procedures relating to the contractor's violation of a conciliation agreement or letter of commitment, is derived from the Executive Order regulations (41 CFR 60–1.34), and contains a number of clarifying modifications. Most notably, paragraph (a)(4) of the proposal contains a clarification that in enforcement proceedings related to violation of a conciliation agreement, OFCCP is not required to present proof of the underlying violations resolved by the agreement. The intent of this provision is to remove any doubt that OFCCP need not litigate claims that have already been resolved through the agreement. Although the current Section 4212 regulations do not contain provisions parallel to the proposal, the proposal reflects OFCCP's current practice under the Act.

Section 60–250.64 Show Cause Notices

This section is substantially identical to § 60–1.28 of the Executive Order regulations. It provides that when the Deputy Assistant Secretary finds a violation he or she may issue to the contractor a notice requiring it to show cause, within 30 days, why enforcement proceedings should not be instituted; the provision also states that such a notice is not a prerequisite to enforcement proceedings. The current Section 4212 regulations do not contain a comparable provision. The 1980 final rule (at § 60–1.25) would have incorporated considerably more detailed procedures regarding show cause notices than are contained in the proposal; for instance, that rule would have incorporated specific rules on the issuance of the notice and its contents. OFCCP believes that it is more appropriate to incorporate such procedures into its Compliance Manual, and has done so.

Section 60–250.65 Enforcement Proceedings

This section generally conforms the provisions governing Section 4212 enforcement proceedings to those under the Executive Order regulations (§ 60–1.26(a)(2)), and reflects OFCCP's long-standing practice under the Act. Similar to the Executive Order regulation, proposed paragraph (a)(1) provides, in part, that where a violation has not been corrected in accordance with applicable conciliation procedures, an administrative enforcement proceeding may be instituted to enjoin the violations, to seek appropriate make whole relief and to impose appropriate sanctions. The current Section 4212 regulations are consistent with this part of proposed paragraph (a)(1), but do not expressly state what relief will be sought in the proceedings. *See* §§ 60–250.26(g)(3) and 60–250.28(a) (the contractor shall be provided a formal hearing where a violation has not been resolved by informal means) and 60–250.29(a) (an opportunity for a formal hearing shall be provided where a violation is not resolved informally and a hearing is requested or the Director proposes to impose a sanction). The above-referenced provisions from the current regulations are subsumed within proposed paragraph (a)(1), and therefore are not separately adopted by the proposal. The proposal at paragraph (a)(1) also differs from the current Section 4212 regulations as well as the Executive Order regulation in the following respects: It provides that enforcement proceedings also may be instituted where OFCCP determines that referral for formal enforcement (rather than settlement) is appropriate; and it specifies that the enforcement referral will be made to the Solicitor of Labor. Further, paragraph (a)(1) of the proposal clarifies that OFCCP may seek relief for aggrieved individuals identified either during a compliance review or a complaint investigation whether or not such individuals have filed a complaint with OFCCP. This clarification responds to an argument that has sometimes been raised by contractors that relief under the Act is available only to persons who have filed a complaint with OFCCP. OFCCP concludes that such a limitation on available relief is clearly inconsistent with the Act.

Finally, paragraph (a)(1) (paralleling the counterpart provision in the Section 503 final rule at § 60–741.65(a)(1)), again contrasting with both the current Section 4212 regulations and the Executive Order regulations, states that interest on back pay shall be compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes. This provision responds to the ruling of the Department of Labor's Assistant Secretary for Employment Standards in *OFCCP* v. *Washington Metropolitan Area Transit Authority*, 84–OFC–8 (orders dated August 23 and November 17, 1989) that simple interest, rather than compounded interest, should be used in the calculation of back pay awards under Section 503. The rationale of that ruling is equally applicable to Section 4212. OFCCP had a longstanding policy of requiring that interest on back pay awards under Section 4212 be compounded; such policy is consistent with the case law under Title VII of the Civil Rights Act of 1964. OFCCP believes that it must reinstate this policy in order to ensure that aggrieved individuals obtain ''make whole'' relief.

Proposed paragraph (a)(2) provides that the Deputy Assistant Secretary, in addition to the use of administrative enforcement proceedings, may seek appropriate judicial action, including injunctive relief, to enforce the contractual provisions set forth in the regulations' equal opportunity clause. This provision is substantially identical to current § 60–250.28(b).

The proposal differs substantively from the 1980 final rule's enforcement procedures, which appear at § 60–1.29, in that it does not incorporate the

procedures contained in paragraphs (i) and (j) of that section. Paragraph (i) of that section provides that the Department may refer alleged violations of the Act by financial institutions to an appropriate financial regulatory agency, and states that such agency may take whatever action it deems appropriate. OFCCP considers this provision unnecessary at this time, and therefore does not propose to carry it forward. Paragraph (j) states an enforcement policy under which the Department will not debar financial institutions from future Federal deposit or share insurance, or cancel, terminate or suspend existing Federal deposit or share insurance. OFCCP wishes to reassure the public that it does not intend to debar or cancel a financial institution's deposit or share insurance. This has been OFCCP's long-standing policy, even in the absence of a regulation mandating that result. Indeed, OFCCP has repeatedly stated on the record in litigation regarding financial institutions that it does not seek debarment or cancellation of deposit and share insurance. OFCCP will maintain that policy. Upon reconsideration, however, OFCCP believes that it is unnecessary to specify this policy in the regulations. The regulations do not generally specify the precise manner in which the agency will exercise its enforcement powers with regard to particular types of contractors.

Proposed paragraph (b), which pertains to hearing practice and procedure under the Act, is derived from § 60–250.29(b) of the current Section 4212 regulations. Proposed paragraph (b)(1), like current paragraph (b)(1), provides that hearings conducted under the Act shall be governed by the hearing rules applicable to enforcement of Executive Order 11246 (41 CFR Part 60–30). Proposed paragraph (b)(1), revising current paragraph (b)(1), states that the Rules of Evidence set out in the hearing rules applicable to the Department's Administrative Law Judges shall also apply to such hearings. These rules, which were issued in 1990, are generally applicable to the Department's formal adversarial adjudications. In contrast to the current regulation, proposed paragraph (b)(1) requires that the Department's final administrative order under a Section 4212 case be issued within one year from the date of the issuance of the Administrative Law Judge's recommended decision, or the submission of the parties' exceptions and responses to exceptions to such decision (if any), whichever is later. OFCCP believes that this time limit is needed in order to ensure that aggrieved individuals obtain expeditious relief.

Proposed paragraph (b)(2), which designates the specific officials in the Office of the Solicitor who may file administrative complaints, corresponds to the last sentence of current paragraph (b)(1). This proposed paragraph incorporates some changes in nomenclature.

Proposed paragraph (b)(3), which incorporates conforming changes to the terminology in the hearing rules for purposes of Part 60–250, is substantially identical to current paragraph (b)(2).

Section 60–250.66 Sanctions and Penalties

Paragraphs (a) and (b), which respectively specify that OFCCP may seek to withhold progress payments on a contract or terminate a contract to enforce compliance with the Act, are substantially identical to current §§ 60–250.28 (c) and (d). Similarly, proposed paragraph (d), which provides that the contractor shall be provided an opportunity for a formal hearing before the imposition of sanctions or penalties, is substantially similar to current § 60–250.29(a).

Proposed paragraph (c) authorizes OFCCP to impose fixed-term debarments. However, proposed paragraph (c)—which provides that a contractor may be debarred from future contracts for either a fixed period of not less than six months but no more than three years—contrasts with the current regulations, which expressly permit only indefinite-period debarments. In this regard, the current regulations (at § 60–250.28(e)) simply establish authority for the imposition of debarments, and (at § 60–250.50) provide that a debarred contractor may be reinstated as an eligible contractor by demonstrating that it has established and will continue to carry out employment practices in compliance with the Act. Explicit regulatory authority to impose debarment for a minimum fixed-term is necessary to ensure the continued future compliance of some contractors. OFCCP wishes to ensure the regulated community that it does not intend to seek a fixed term debarment for minor, technical violations of the law. (This change is consistent with § 60–741.66(c) of the Section 503 final rule.)

OFCCP believes the fixed-term debarment sanction will be particularly effective in encouraging compliance among the limited class of recalcitrant contractors who repeatedly break their promises of future compliance with respect to affirmative action and recordkeeping requirements. Fixed-period debarments will serve as a more effective deterrent in these cases than the current practice of reinstating the contractor upon its demonstration of compliance. Under the current procedure the contractor may be reinstated without incurring any economic loss for some violations (e.g., a contractor which has failed to develop an AAP can simply do so to be eligible for reinstatement, provided that it can demonstrate that it will remain in compliance). As discussed below, pursuant to proposed § 60–250.68, a contractor debarred for a fixed term will not be automatically reinstated upon such a showing. In making his or her determination as to whether reinstatement of such a contractor is appropriate under proposed § 60–250.68, the Deputy Assistant Secretary shall additionally consider, among other factors, the severity of the violation which resulted in the debarment and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part.

The proposal drops the provision contained in current § 60–250.27 that noncompliance with the contractor's affirmative action clause obligations is a ground for taking appropriate action for noncompliance. This issue is already addressed in proposed § 60–250.66.

Section 60–250.67 Notification of Agencies

This proposed section, which provides that OFCCP shall ensure that the heads of all agencies are notified of debarments, is substantially similar to current § 60–250.30, which requires the Director to notify agencies ''of any action for noncompliance taken against a contractor.'' However, in contrast to the proposal, current § 60–250.30 also addresses the granting by a contracting agency of waivers in the national interest. This provision is not carried forward, because, as discussed above (see discussion regarding proposed § 60–250.4(b)(1)), OFCCP unilaterally grants such waivers, and no longer shares enforcement under Section 4212 with other agencies.

Moreover, the proposal drops current § 60–250.31, which requires the Director to distribute a list of debarred contractors to all executive departments and agencies. This function is currently performed by the General Services Administration. The 1980 final rule would have required (at § 60–1.30) that OFCCP promptly notify the Comptroller General of the United States regarding contract cancellations and debarments. OFCCP, which currently follows this practice, does not believe it necessary to

incorporate this provision into the regulations. Further, that section of the final rule would have required that OFCCP take appropriate steps to notify prime contractors of the debarred contractor's ineligibility for subcontracts. Upon reconsideration, OFCCP concludes that the incidence of prime contractors contracting with debarred firms is not significant enough to justify the administrative burdens this provision would place on the agency.

Section 60–250.68 Reinstatement of Ineligible Contractors

This section provides that a contractor that is debarred for an indefinite period may request reinstatement at any time, and that a contractor debarred for a fixed period may request reinstatement after six months. In the case of either type of debarment the contractor is required to show that it has established and will carry out employment practices in compliance with the Act. Additionally, in determining whether reinstatement is appropriate for a contractor that has been debarred for a fixed period, the Deputy Assistant Secretary also shall consider such factors as the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part. The section is derived from current § 60–250.50. The current regulation, in contrast to the proposal, does not address fixed-period debarments and does not provide the contractor an opportunity to appeal a denial of its request for reinstatement.

As discussed above, OFCCP believes that the use of fixed-term debarments is necessary to provide an effective deterrent with regard to aggravated or willful violations, including failure to make or maintain records (see discussion regarding proposed § 60–250.66(c)). Thus, contractors that have committed such violations should not be reinstated based merely upon a showing that they are and will remain in compliance, as in the case of indefinite-term debarments. Rather, in addition to this showing, the Deputy Assistant Secretary's determination should be made on a case-by-case basis after consideration of the additional specified factors. OFCCP believes that imposing a mandatory six-month waiting period during which the reinstatement request may not be submitted will help deter such violations. The proposed appeal procedure in paragraph (b) for contractors whose reinstatement requests are denied is intended to ensure that contractors' requests receive full and fair consideration. The proposal adopts some of the 1980 final rule's reinstatement procedures (§ 60–1.31). For instance, like the final rule, the proposal specifies that the contractor may be subject to a compliance review before it is reinstated, and that the matter may be referred to an Administrative Law Judge before a final determination is made on the reinstatement request. In contrast to the final rule, the proposal permits the contractor to submit a petition to the Secretary appealing a denial of a reinstatement request. The final rule would have provided for a review by the Secretary (pursuant to the post-hearing procedures set out in 41 CFR Part 60–30) of the Director's denial of a request only where the Director decided to remand the matter to an Administrative Law Judge. The final rule would have established some additional detailed procedures that OFCCP, upon reconsideration, does not believe need be incorporated into the regulations.

Section 60–250.69 Intimidation and Interference

Currently, the regulations provide (at § 60–250.51) that the sanctions and penalties contained therein may be exercised against any contractor which fails to ensure that no person intimidates, threatens, coerces or discriminates against any individual because he or she files a complaint or otherwise participates in compliance activity under the Act. The proposal contains a similar prohibition but specifies that the contractor itself shall not engage in such activities and that the contractor shall ensure that all persons under its control do not do so, that the prohibition applies with respect to participation in compliance activities under a Federal, state or local law which requires equal opportunity for special disabled veterans and Vietnam era veterans and that harassment is also prohibited. Moreover, the proposal states that the prohibition applies with respect to an individual's opposition to any practice that is unlawful under the Act or similar Federal, state or local laws, and to the exercise of any other right protected by the Act. The proposal is substantially similar to the counterpart provision in the 1980 final rule (§ 60–1.28). The intent of the proposal is to incorporate strengthened provisions that ensure that individuals fully enjoy all rights protected under the Act, the regulations and comparable Federal, state and local laws without the threat of harassment or intimidation. OFCCP may seek the same range of sanctions for a violation of this provision (such as debarment and/or back pay) as it does for other violations of the Act.

Section 60–250.70 Disputed Matters Related to Compliance With the Act

This section clarifies that the regulations govern disputes relative to the compliance under the Act but not other incidental disputes such as those relating to contract costs connected with the contractor's efforts to comply with the Act. The proposal is substantially identical to current § 60–250.32.

Subpart E—Ancillary Matters

Section 60–250.80 Responsibilities of State Employment Service Offices

This section is substantially identical to current § 60–250.33 (with the addition of a few editorial changes).

Section 60–250.81 Recordkeeping

Under the current regulations (§ 60–250.52(a)), contractors are required to maintain for one year records relating to complaints and actions taken by the contractor in connection with such complaints. Paragraph (a) of the proposal revises this obligation in several ways: first it makes the record retention obligation applicable to any personnel or employment record made or kept by the contractor, and sets out a listing of examples of the types of records that must be retained. This provision conforms to the analogous recordkeeping requirement under the Section 503 (§ 60–741.81(a)), which, in turn, is consistent with the requirements under Title VII of the Civil Rights Act of 1964. (Thus, most contractors are already required to comply with this requirement.) OFCCP proposes this change because it believes that to monitor and enforce the Act effectively it must be assured that it can obtain all of the contractor's personnel records (not only those involving complaints). Access to these records will better enable OFCCP to effectively investigate compliance with the Act by, for instance, allowing it to evaluate the contractor's employment policies and practices with respect to applicants and employees who are special disabled veterans or veterans of the Vietnam era in comparison to policies and practices that have been applied to similarly situated applicants and employees who are not covered veterans.

Second, proposed paragraph (a) extends the required record retention period from one to two years for larger contractors. In this context, larger contractors are those that have 150 or more employees and a Government

contract of $150,000 or more. This approach is consistent with the Section 503 final rule. OFCCP believes that a two-year period provides greater assurance that relevant records will be available during compliance reviews (during which the agency generally reviews employment practices and activity going back two years).

Third, proposed paragraph (a) requires that when a contractor has been notified that a complaint has been filed, that a compliance review has been initiated or that an enforcement action has been commenced, the contractor shall preserve all relevant personnel records until the final disposition of the action. This provision conforms to the corresponding recordkeeping requirement applicable to the Section 503 final rule, which, in turn, is based on the requirement applicable to the ADA and Title VII. The purpose of this requirement is obvious—to ensure that OFCCP can obtain all relevant documents during a compliance investigation or enforcement action.

Proposed paragraph (b), which is generally consistent with current § 60–250.52(b), provides that the failure to preserve the records required by proposed paragraph (a) constitutes noncompliance with the Act. Additionally, proposed paragraph (b), in a provision that is not paralleled in the current regulations, states that where a contractor has destroyed or failed to preserve required records, there may be a presumption that such records would have been unfavorable to the contractor. Paragraph (b) further specifies, however, that the presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of its control. This provision is consistent with the corresponding provision in the Section 503 final rule (§ 60–741.81(b)), which is consistent with § 632.3(b)(2)(ii) of EEOC's Compliance Manual. The intent of this provision is to deter contractors from deliberate attempts to frustrate OFCCP's compliance monitoring and enforcement efforts by destroying or failing to preserve records. The adverse inference established by paragraph (b) would be used by OFCCP in both investigations of compliance and in enforcement litigation.

Proposed paragraph (c), which has no parallel in the current regulations, clarifies that the contractor is obligated to preserve only those records which are created or kept on or after the effective date of the regulations. The record retention requirements under the current regulations remain in effect until this proposal becomes effective in final form.

Section 60–250.82 Access to Records

This section provides that the contractor shall permit OFCCP access to its place of business in order to conduct investigations and to inspect and copy relevant records, and that the information obtained in this manner shall be used only in connection with the administration of the Act. The proposal is generally consistent with the current corresponding Section 4212 regulation (§ 60–250.53). For the sake of consistency and clarity, this section tracks the language in the parallel Executive Order regulation (41 CFR 60–1.43).

Section 60–250.83 Labor Organizations and Recruiting and Training Agencies

The proposal provides at paragraph (a) that when a revision of a collective bargaining agreement may be required to conform it to the requirements of the Section 4212 regulations, labor organizations which are parties to such an agreement shall be given adequate opportunity to present their views to OFCCP. Paragraph (b) states that OFCCP shall make efforts to cause labor organizations involved with work performed by a contractor to cooperate in the implementation of the Act. The proposal is substantially identical to the current regulations at § 60–250.9. Similarly, proposed paragraphs (a) and (b) are substantially identical to §§ 60–1.9(c)(2) and (a), respectively, of the 1980 final rule. However, the 1980 final rule would have implemented some additional provisions: § 60–1.9(b) of that rule states that the Director of OFCCP may hold hearings with regard to the practices and policies of labor organizations to ensure compliance with Section 4212; § 60–1.9(c)(1) provides that collective bargaining representatives shall be given written notice of any on-site compliance investigations; and § 60–1.9(d) states that the Director may notify any Federal, state or local agency of his or her conclusions with respect to any labor organization's failure to cooperate with the implementation of the Act, and that he or she may notify appropriate Federal agencies regarding violations of Federal law. Upon further consideration, OFCCP does not believe these additional provisions need be incorporated into the regulations.

Section 60–250.84 Rulings and Interpretations

The proposal, which provides that rulings and interpretations of the Act and the regulations shall be made by the Deputy Assistant Secretary, contrasts with the corresponding current regulation (§ 60–250.54), which provides that the Secretary or his or her designee shall perform this function. The proposal designates the Deputy Assistant Secretary as the responsible official in order to reflect current OFCCP practice.

Section 60–250.85 Effective Date

The first sentence of this provision specifies when the regulations take effect, and that they do not apply retroactively. The second sentence is substantially identical to the last sentence of current § 60–250.5(a) (Applicability of the affirmative action program requirement), but it clarifies that contractors presently holding Government contracts are required to update their affirmative action programs within 120 days of the effective date of these regulations only to the extent necessary to comply with the changes made by the final rule.

Appendix A—Guidelines on a Contractor's Duty to Provide Reasonable Accommodation

It has been OFCCP's experience that one of the most difficult issues that contractors encounter in attempting to comply with Section 4212 relates to the duty to provide reasonable accommodation for special disabled veterans, and that the absence of readily accessible clear and concise guidance on the subject has contributed to this difficulty. The intent of proposed Appendix A, which parallels a corresponding appendix contained in the Section 503 final rule, is to provide such guidance. The current regulations contain no comparable guidance. As stated at the end of the appendix, it is largely derived from and is consistent with the discussion on the duty to provide reasonable accommodation contained in the appendix to the EEOC regulations. (The second paragraph of the proposed appendix, however, contains a discussion regarding the contractor's affirmative action duties pursuant to proposed §§ 60–250.42 and 60–250.44(d), which is not paralleled in the EEOC appendix.)

For the sake of brevity, proposed Appendix A condenses and summarizes the most significant portions of the EEOC appendix regarding the reasonable accommodation duty. The relevant portions of the EEOC appendix are those that relate to the failure to make reasonable accommodation (§ 1630.9) and to the definitions for ''reasonable accommodation'' (§ 1630.2(o)) and ''undue hardship''

(§ 1630.2(p)). Additionally, some guidance in the proposed appendix is based on a discussion from the ADA's legislative history that is not incorporated into the EEOC's appendix. The discussion provides some practical examples of methods that may be used to carry out the reasonable accommodation duty (e.g., resources to consult to obtain assistance and specific types of accommodations for particular disabilities). Moreover, the proposed appendix (in the next to last paragraph) provides specific guidance on the issue of providing reasonable accommodation with respect to the employment application process; this discussion is drawn from Appendix C of OFCCP's December 30, 1980, proposed rule (45 FR 86214).

Appendix B—Sample Invitation to Self-Identify

On May 1, 1996, OFCCP published (61 FR 19366) an interim rule amending Appendix A of the current regulations relating to invitations to self-identify. The purpose of the interim rule was to conform the invitation to self-identify requirement under VEVRAA with the requirement contained in the new Section 503 final rule (61 FR 19336).

This appendix is patterned after the VEVRAA interim rule and the Section 503 final rule. However, this proposal also includes in the sample invitation definitions for the terms ''special disabled veteran'' and ''veteran of the Vietnam era.''

Appendix C—Review of Personnel Processes

Proposed Appendix C sets out an example of an appropriate set of procedures that contractors may use to facilitate a review by the contractor and the Government of the contractor's implementation of its duty to evaluate its personnel processes pursuant to proposed § 60–250.44(b). (Section 60–250.44(b) requires the contractor to ensure that its personnel processes provide for careful consideration of the qualifications of applicants and employees who are known to be special disabled veterans or veterans of the Vietnam era for employment opportunities.) This appendix is generally consistent with current Appendix B. However, the proposal drops a provision contained in the current appendix (paragraph 3) that requires, in cases where an applicant or employee who is a special disabled veteran or veteran of the Vietnam era is rejected for an employment opportunity, that the contractor append to the individual's application or personnel form a statement comparing the qualifications of the rejected individual with those of the person selected for the opportunity. OFCCP proposes to omit this requirement because it has not provided sufficient assistance to OFCCP in its enforcement and monitoring efforts under the Act to justify the continued imposition of this fairly significant burden on contractors.

Regulatory Procedures

Executive Order 12866

The Department is issuing this proposed rule in conformance with Executive Order 12866. This proposal has been determined not to be significant for purposes of Executive Order 12866 and therefore need not be reviewed by OMB. This proposal does not meet the criteria of Section 3(f)(1) of Executive Order 12866 and therefore the information enumerated in Section 6(a)(3)(C) of that Order is not required.

This conclusion is based on the fact that this proposed rule does not substantively change the existing obligation of Federal contractors to apply a policy of nondiscrimination and affirmative action in their employment of qualified special disabled veterans and veterans of the Vietnam era. For instance, although the rule generally conforms the existing Section 4212 regulations' nondiscrimination provisions to the Section 503 final rule published by the OFCCP, it does not significantly alter the substance of the existing nondiscrimination provisions.

Regulatory Flexibility Act

The proposed rule, if promulgated in final, will clarify existing requirements for Federal contractors. In view of this fact and because the proposed rule does not substantively change existing obligations for Federal contractors, we certify that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Unfunded Mandates Reform

Executive Order 12875—This proposed rule, if promulgated in final, will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This proposed rule, if promulgated in final, will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

The proposed rule: extends the current one-year record retention period to two years (for larger contractors) and makes the retention obligation applicable to a broader range of records; requires that, for purposes of confidentiality, medical information obtained regarding the medical condition or history of any applicant or employee be collected and maintained on separate forms and in separate medical files; and requires those contractors who, for affirmative action purposes, choose to invite applicants and employees to identify themselves as special disabled veterans or veterans of the Vietnam era to maintain a separate file on such applicants and employees. The recordkeeping provisions of this proposed rule are consistent with those contained in the Section 503 final rule. Therefore, although the recordkeeping provisions are more expansive than those in the current VEVRAA regulations, they do not result in increased recordkeeping burdens. Information collection under the Section 503 regulations, and under the VEVRAA regulations, is covered by OMB control number 1215–0072.

List of Subjects in 41 CFR Part 60–250

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, and Veterans.

Signed at Washington, D.C., this 23rd day of August, 1996.

Robert B. Reich,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

Accordingly, with respect to the rule amending 41 CFR Chapter 60 published on December 30, 1980 (45 FR 86216), which was delayed indefinitely at 46 FR 42865, the revision of Part 60–250 is proposed to be withdrawn, and in Parts 60–1 and 60–30, all references to Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act are proposed to be withdrawn; and, under authority of 38 U.S.C. 4212, Title 41 of the Code of Federal Regulations, Chapter 60 is proposed to be amended as follows:

Part 60–250 is revised to read as follows:

PART 60–250—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Subpart A—Preliminary Matters, Equal Opportunity Clause

Subpart B—Discrimination Prohibited

Subpart C—Affirmative Action Program

Subpart D—General Enforcement and Complaint Procedures

Subpart E—Ancillary Matters

Authority: 29 U.S.C 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

§ 60–250.1 Purpose, applicability and construction.

(a) *Purpose.* The purpose of the regulations in this part is to set forth the standards for compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212, or VEVRAA), which requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.

(b) *Applicability.* This part applies to all Government contracts and subcontracts of $10,000 or more for the purchase, sale or use of personal property or nonpersonal services (including construction): *Provided,* That subpart C of this part applies only as described in § 60–250.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part.

(c) *Construction.*—(1) *In general.* The Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*) set out as an appendix to 29 CFR Part 1630 issued pursuant to Title I may be relied upon for guidance in interpreting the parallel provisions of this part.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any state or political subdivision that provides greater or equal protection for the rights of special disabled veterans or veterans of the Vietnam era as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

§ 60–250.2 Definitions.

(a) *Act* means the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

(b) *Equal opportunity clause* means the contract provisions set forth in § 60–250.5, ''Equal opportunity clause.''

(c) *Secretary* means the Secretary of Labor, United States Department of Labor, or his or her designee.

(d) *Deputy Assistant Secretary* means the Deputy Assistant Secretary for Federal Contract Compliance of the United States Department of Labor, or his or her designee.

(e) *Government* means the Government of the United States of America.

(f) *United States*, as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

(g) *Recruiting and training agency* means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(h) *Contract* means any Government contract or subcontract.

(i) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term *Government contract* does not include agreements in which the parties stand in the relationship of employer and employee, and federally assisted contracts.

(1) *Modification* means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions.

(2) *Contracting agency* means any department, agency, establishment or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) *Person*, as used in paragraphs (i) and (l) of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(4) *Nonpersonal services*, as used in paragraphs (i) and (l) of this section, includes, but is not limited to, the following: Utility, construction, transportation, research, insurance, and fund depository.

(5) *Construction*, as used in paragraphs (i) and (l) of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the

supervision, inspection, and other on-site functions incidental to the actual construction.

(6) *Personal property,* as used in paragraphs (i) and (l) of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(j) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor holding a contract of $10,000 or more.

(k) *Prime contractor* means any person holding a contract of $10,000 or more, and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' includes any person who has held a contract subject to the Act.

(l) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services (including construction) which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(m) *Subcontractor* means any person holding a subcontract of $10,000 or more and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' any person who has held a subcontract subject to the Act.

(n)(1) *Special Disabled Veteran means:*

(i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more; or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(2) *Serious employment handicap,* as used in paragraph (n)(1) of this section, means a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes and interests.

(o)(1) *Qualified special disabled veteran* means a special disabled veteran who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

(2) See § 60–250.3 for exceptions to the definition in paragraph (o)(1) of this section.

(p) *Veteran of the Vietnam era* means a person who:

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(q) *Essential functions*—(1) *In general.* The term *essential functions* means fundamental job duties of the employment position the special disabled veteran holds or desires. The term *essential functions* does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The contractor's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(r) *Reasonable accommodation.* (1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant who is a special disabled veteran to be considered for the position such applicant desires; [1] or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified special disabled veteran to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable the contractor's employee who is a special disabled veteran to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees who are not special disabled veterans.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by special disabled veterans; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for special disabled veterans.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified special disabled veteran in need of the accommodation.[2] This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(s) *Undue hardship.*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (s)(2) of this section.

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[1] A contractor's duty to provide a reasonable accommodation with respect to applicants who are special disabled veterans is not limited to those who ultimately demonstrate that they are qualified to perform the job in issue. Special disabled veteran applicants must be provided a reasonable accommodation with respect to the application process if they are qualified with respect to that process (e.g., if they present themselves at the correct location and time to fill out an application).

[2] Contractors must engage in such an interactive process with a special disabled veteran, whether or not a reasonable accommodation ultimately is identified that will make the person a qualified individual. Contractors must engage in the interactive process because, until they have done so, they may be unable to determine whether a reasonable accommodation exists that will result in the person being qualified.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(t) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(u) *Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that a special disabled veteran poses a *direct threat* shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

§ 60–250.3 Exceptions to the definition of ''special disabled veteran'' and ''qualified special disabled veteran.''

(a) *Alcoholics*—(1) *In general.* As used in this part, the terms *special disabled veteran* and *qualified special disabled veteran* do not include an individual who is an alcoholic whose current use of alcohol prevents such individual from performing the essential functions of the employment position such individual holds or desires or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or to the health or safety of the individual or others.

(2) *Duty to provide reasonable accommodation.* Nothing in paragraph (a)(1) of this section shall relieve the contractor of its obligation to provide a reasonable accommodation for an individual described in paragraph (a)(1) of this section when such an accommodation will enable the individual to perform the essential functions of the employment position such individual holds or desires, or when the accommodation will eliminate or reduce the direct threat to property or the health or safety of the individual or others posed by such individual, provided that such individual satisfies the requisite skill, experience, education and other job-related requirements of such position.

(b) *Contagious disease or infection*—(1) *In general.* The terms *special disabled veteran* and *qualified special disabled veteran* do not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of the individual or others or who, by reason of the currently contagious disease or infection, is unable to perform the essential functions of the employment position such individual holds or desires.

(2) *Duty to provide reasonable accommodation.* Nothing in paragraph (b)(1) of this section shall relieve the contractor of its obligation to provide a reasonable accommodation for an individual described in paragraph (b)(1) of this section when such an accommodation will enable the individual to perform the essential functions of the employment position such individual holds or desires, or when the accommodation will eliminate or reduce the direct threat to the health or safety of the individual or others posed by such individual, provided that such individual satisfies the requisite skill, experience, education and other job-related requirements of such position.

§ 60–250.4 Coverage and waivers.

(a) *General*—(1) *Contracts and subcontracts of $10,000 or more.* Contracts and subcontracts of $10,000 or more, are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) *Contracts for indefinite quantities.* With respect to indefinite delivery-type contracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, ''call-type'' contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be less than $10,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order is $10,000 or more. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Employment activities within the United States.* This part applies only to employment activities within the United States and not to employment activities abroad. The term *employment activities within the United States* includes actual employment within the United States, and decisions of the contractor made within the United States pertaining to the contractor's applicants and employees who are within the United States, regarding employment opportunities abroad (such as recruiting and hiring within the United States for employment abroad, or transfer of persons employed in the United States to contractor establishments abroad).

(4) *Contracts with state or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a state or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The Deputy Assistant Secretary may waive the application to any contract of the equal

opportunity clause in whole or part when he or she deems that special circumstances in the national interest so require. The Deputy Assistant Secretary may also grant such waivers to groups or categories of contracts: where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the Act. When a waiver has been granted for any class of contracts, the Deputy Assistant Secretary may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) *National security.* Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Deputy Assistant Secretary in writing within 30 days.

(3) *Facilities not connected with contracts.* The Deputy Assistant Secretary may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities which he or she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor.

§ 60–250.5 Equal opportunity clause.

(a) *Government contracts.* Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

Equal Opportunity for Special Disabled Veterans and Veterans of the Vietnam Era

1. The contractor will not discriminate against any employee or applicant for employment because he or she is a special disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a special disabled veteran or veteran of the Vietnam era in all employment practices, including the following:

i. recruitment, advertising, and job application procedures;

ii. hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

iii. rates of pay or any other form of compensation and changes in compensation;

iv. job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

v. leaves of absence, sick leave, or any other leave;

vi. fringe benefits available by virtue of employment, whether or not administered by the contractor;

vii. selection and financial support for training, including apprenticeship, and on the job training under 38 U.S.C 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

viii. activities sponsored by the contractor including social or recreational programs; and

ix. any other term, condition, or privilege of employment.

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local office of the state employment service system wherein the opening occurs.

3. Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

4. Whenever the contractor becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service system in each state where it has establishments of the name and location of each hiring location in the state: *Provided,* That this requirement shall not apply to state and local governmental contractors. As long as the contractor is contractually bound to these provisions and has so advised the state system, there is no need to advise the state system of subsequent contracts. The contractor may advise the state system when it is no longer bound by this contract clause.

5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

6. As used in this clause: (i) *All employment openings* includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

(ii) *Appropriate local office of the state employment service system* means the local office of the Federal-state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

(iii) *Executive and top management* means any employee: (a) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and (d) who customarily and regularly exercises discretionary powers; and (e) who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his or her hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph 6.(iii); *Provided,* that (e) of this paragraph 6.(iii) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he or she is employed.

(iv) *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established ''recall'' lists. The exception does not apply to a particular

opening once an employer decides to consider applicants outside of his or her own organization.

7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

8. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans or veterans of the Vietnam era. The contractor must ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended and is committed to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.

11. The contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

[End of Clause]

(b) *Subcontracts.* Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) *Adaption of language.* Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

(d) *Inclusion of the equal opportunity clause in the contract.* It is not necessary that the equal opportunity clause be quoted verbatim in the contract. The clause may be made a part of the contract by citation to 41 CFR 60–250.5(a).

(e) *Incorporation by operation of the Act.* By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.

(f) *Duties of contracting agencies.* Each contracting agency shall cooperate with the Deputy Assistant Secretary and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Deputy Assistant Secretary with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Deputy Assistant Secretary, and taking such actions for noncompliance as are set forth in § 60–250.66 as may be ordered by the Secretary or the Deputy Assistant Secretary.

Subpart B—Discrimination Prohibited

§ 60–250.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(g) Selection and financial support for training, including, apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by the contractor including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 60–250.21 Prohibitions.

The term *discrimination* includes, but is not limited to, the acts described in this section and § 60–250.23.

(a) *Disparate treatment.* It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual because of that individual's status as a special disabled veteran or veteran of the Vietnam era.

(b) *Limiting, segregating and classifying.* Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of that individual's status as a special disabled veteran or veteran of the Vietnam era. For example, the contractor may not segregate qualified special disabled veterans or veterans of the Vietnam era into separate work areas or into separate lines of advancement.

(c) *Contractual or other arrangements—(1) In general.* It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee who is a special disabled veteran or veteran of the Vietnam era to the discrimination prohibited by this part.

(2) *Contractual or other arrangement defined.* The phrase *contractual or other arrangement or relationship* includes, but is not limited to, a relationship with: an employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(3) *Application.* This paragraph (c) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(d) *Standards, criteria or methods of administration.* It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(1) Have the effect of discriminating on the basis of status as a special disabled veteran or veteran of the Vietnam era; or

(2) Perpetuate the discrimination of others who are subject to common administrative control.

(e) *Relationship or association with a special disabled veteran or a veteran of the Vietnam era.* It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known special disabled veteran or Vietnam era veteran status of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

(f) *Not making reasonable accommodation.* (1) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is a special disabled veteran, unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(2) It is unlawful for the contractor to deny employment opportunities to an otherwise qualified job applicant or employee who is a special disabled veteran based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(3) A qualified special disabled veteran is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified special disabled veteran.

(g) *Qualification standards, tests and other selection criteria*—(1) *In general.* It is unlawful for the contractor to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out individuals on the basis of their status as special disabled veterans or veterans of the Vietnam era, unless the standard, test or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude a special disabled veteran if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude individuals on the basis of their status as special disabled veterans or veterans of the Vietnam era but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant who is a special disabled veteran because the applicant's disability prevents him or her from performing marginal functions. When considering a special disabled veteran or a veteran of the Vietnam era for an employment opportunity, the contractor may not rely on portions of such veteran's military record, including his or her discharge papers, which are not relevant to the qualification requirements of the opportunity in issue.

(2) The Uniform Guidelines on Employee Selection Procedures, 41 CFR Part 60–3, do not apply to 38 U.S.C. 4212 and are similarly inapplicable to this part.

(h) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who is a special disabled veteran with a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(i) *Compensation.* In offering employment or promotions to special disabled veterans or veterans of the Vietnam era, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related and/or military-service-related pension or other disability-related and/or military-service-related benefit the applicant or employee receives from another source.

§ 60–250.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (See § 60–250.2(u) defining *direct threat.*)

§ 60–250.23 Medical examinations and inquiries.

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is a special disabled veteran or as to the nature or severity of such a veteran's disability.

(b) *Permitted medical examinations and inquiries*—(1) *Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of their status as a special disabled veteran.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

(5) Medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees who are special disabled veterans as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) *Invitation to self-identify.* The contractor shall invite applicants to self-identify as being covered by the Act, as specified in § 60–250.42.

(d) *Confidentiality and use of medical information*. (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

§ 60–250.24 Drugs and alcohol.

(a) *Specific activities permitted*. The contractor:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) *Drug testing*—(1) *General policy*. For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of § 60–250.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation employees*. Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of §§ 60–250.23(b)(5) and (c).

§ 60–250.25 Health insurance, life insurance and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with state law.

(b) The contractor may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The contractor may not deny a qualified special disabled veteran equal access to insurance or subject a qualified special disabled veteran to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b) and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C—Affirmative Action Program

§ 60–250.40 Applicability of the affirmative action program requirement.

(a) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of $50,000 or more.

(b) Contractors described in paragraph (a) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(c) The affirmative action program shall be reviewed and updated annually.

(d) The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

§ 60–250.41 Availability of affirmative action program.

The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

§ 60–250.42 Invitation to self-identify.

(a) Except as provided in paragraphs (b) and (c) of this section, the contractor shall, after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, invite the applicant to inform the contractor whether the applicant believes that he or she may be covered by the Act and wishes to benefit under the affirmative action program.

(b) The contractor may invite special disabled veterans to self-identify prior to making a job offer only when:

(1) The invitation is made when the contractor actually is undertaking affirmative action for special disabled veterans at the pre-offer stage; or

(2) The invitation is made pursuant to a Federal, state or local law requiring

affirmative action for special disabled veterans.

(c) The contractor may invite veterans of the Vietnam era to self-identify prior to making a job offer only when:

(1) The invitation is made when the contractor actually is undertaking affirmative action for veterans of the Vietnam era at the pre-offer stage; or

(2) The invitation is made pursuant to a Federal, state or local law requiring affirmative action for veterans of the Vietnam era.

(d) The invitation referenced in paragraphs (a) through (c) of this section shall state that a request to benefit under the affirmative action program may be made immediately and/or at any time in the future. The invitation also shall summarize the relevant portions of the Act and the contractor's affirmative action program. Furthermore, the invitation shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Act. If an applicant so identifies himself or herself, the contractor should also seek the advice of the applicant regarding proper placement and appropriate accommodation, after a job offer has been extended. The contractor also may make such inquiries to the extent they are consistent with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 (e.g., in the context of asking applicants to describe or demonstrate how they would perform the job). The contractor shall maintain a separate file on persons who have self-identified and provide that file to OFCCP upon request. This information may be used only in accordance with this part. (An acceptable form for such an invitation is set forth in Appendix B of this part. Because a contractor usually may not seek advice from an applicant regarding placement and accommodation until after a job offer has been extended, the invitation set forth in Appendix B of this part contains instructions regarding modifications to be made if it is used at the pre-offer stage.)

(e) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees who are known to the contractor to be special disabled veterans or veterans of the Vietnam era.

(f) Nothing in this section shall relieve the contractor from liability for discrimination under the Act.

§ 60–250.43 Affirmative action policy.

Under the affirmative action obligations imposed by the Act, contractors shall not discriminate because of status as a special disabled veteran or veteran of the Vietnam era and shall take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60–250.20.

§ 60–250.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees who are special disabled veterans are informed of the contents of the policy statement (for example, the contractor may have the statement read to a visually disabled individual, or may lower the posted notice so that it may be read by a person in a wheelchair). The policy statement should indicate the chief executive officer's attitude on the subject matter, provide for an audit and reporting system (see paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (see paragraph (i) of this section). Additionally, the policy should state, among other things, that the contractor will: recruit, hire, train and promote persons in all job titles, and ensure that all other personnel actions are administered, without regard to special disabled veteran or Vietnam era veteran status; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in an investigation, compliance review, hearing, or any other activity related to the administration of the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA) or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era;

(3) Opposing any act or practice made unlawful by VEVRAA or its implementing regulations in this part or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era; or

(4) Exercising any other right protected by VEVRAA or its implementing regulations in this part.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known special disabled veterans or veterans of the Vietnam era for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that when a special disabled veteran or a veteran of the Vietnam era is considered for employment opportunities, the contractor relies only on that portion of the individual's military record, including his or her discharge papers, that is relevant to the requirements of the opportunity in issue. The contractor shall ensure that its personnel processes do not stereotype special disabled veterans and veterans of the Vietnam era in a manner which limits their access to all jobs for which they are qualified. The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government. (Appendix C of this part is an example of an appropriate set of procedures. The procedures in Appendix C of this part are not required and contractors may develop other procedures appropriate to their circumstances.)

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified special disabled veterans, they are job-related for the position in question and are consistent with business necessity.

(2) Whenever the contractor applies physical or mental qualification

standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified special disabled veterans, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph (c)(2).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (See § 60–250.2(u) defining *direct threat*.)

(d) *Reasonable accommodation to physical and mental limitations.* The contractor shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified special disabled veteran unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. If an employee who is known to be a special disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability; if the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees are not harassed because of their status as a special disabled veteran or veteran of Vietnam era.

(f) *External dissemination of policy, outreach and positive recruitment.* The contractor shall undertake appropriate outreach and positive recruitment activities such as those listed in paragraphs (f)(1) through (f)(8) of this section that are reasonably designed to effectively recruit qualified special disabled veterans and veterans of the Vietnam era. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraphs (f)(1) through (f)(8) of this section or that its activities will be limited to those listed. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(1) The contractor should enlist the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for, qualified special disabled veterans and veterans of the Vietnam era, to fulfill its commitment to provide meaningful employment opportunities to such veterans:

(i) The local Veterans Employment Representative or his or her designee in the state employment service office nearest the contractor's establishment;

(ii) The Department of Veterans Affairs Regional Office nearest the contractor's establishment;

(iii) The veterans' counselors and coordinators (''Vet-Reps'') on college campuses;

(iv) The service officers of the national veterans groups active in the area of the contractor's establishment; and

(v) Local veterans' groups and veterans' service centers near the contractor's establishment.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(3) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are special disabled veterans or veterans of the Vietnam era. An effort should be made to participate in work-study programs with Department of Veterans Affairs rehabilitation facilities which specialize in training or educating disabled veterans.

(4) The contractor should establish meaningful contacts with appropriate veterans' service organizations which serve special disabled veterans or veterans of the Vietnam era for such purposes as advice, technical assistance, and referral of potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have authority to approve or disapprove the acceptability of affirmative action programs.

(5) Special disabled veterans and veterans of the Vietnam era should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(6) The contractor should send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(7) The contractor should take positive steps to attract qualified special disabled veterans and veterans of the Vietnam era not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for Vietnam era veterans and veterans with disabilities.

(8) The contractor, in making hiring decisions, should consider applicants who are known special disabled veterans or veterans of the Vietnam era for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop internal procedures such as those listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraph (g)(2) of this section or that its activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing practices are adequate.

(2) The contractor should implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual;

(ii) Inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified special disabled veterans and veterans of the Vietnam era. The contractor should periodically schedule special meetings with all employees to discuss policy and explain individual employee responsibilities;

(iii) Publicize it in the company newspaper, magazine, annual report and other media;

(iv) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude;

(v) Discuss the policy thoroughly in both employee orientation and management training programs;

(vi) Meet with union officials and/or employee representatives to inform them of the contractor's policy, and request their cooperation;

(vii) Include articles on accomplishments of special disabled veterans and veterans of the Vietnam era in company publications; and

(viii) When employees are featured in employee handbooks or similar publications for employees, include special disabled veterans.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program;

(ii) Indicate any need for remedial action;

(iii) Determine the degree to which the contractor's objectives have been attained;

(iv) Determine whether known special disabled veterans and veterans of the Vietnam era have had the opportunity to participate in all company sponsored educational, training, recreational and social activities; and

(v) Measure the contractor's compliance with the affirmative action program's specific obligations.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity should appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary top management support and staff to manage the implementation of this program.

(j) *Training.* All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented.

Subpart D—General Enforcement and Complaint Procedures

§ 60–250.60 Compliance reviews.

(a) OFCCP may conduct compliance reviews to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated in accordance with this part during employment. The compliance review shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60–250.62.

(c) *VETS–100 Report.* During a compliance review, OFCCP will verify whether the contractor has complied with its obligation, pursuant to 41 CFR Part 61–250, to file its annual Veterans' Employment Report (VETS–100 Report) with the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET). If the contractor has failed to file a timely VETS–100 Report, OFCCP will notify OASVET.

§ 60–250.61 Complaint procedures.

(a) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally, or by an authorized representative, file a written complaint alleging a violation of the Act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown. Complaints may be submitted to the OFCCP, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or to any OFCCP regional, district, or area office. Complaints may also be submitted to the Veterans' Employment and Training Service of the Department of Labor directly, or through the Local Veterans' Employment Representative (LVER) or his or her designee at the local state employment service office. Such parties will assist veterans in preparing complaints, promptly refer such complaints to OFCCP, and maintain a record of all complaints which they receive and forward. OFCCP shall inform the party forwarding the complaint of the progress and results of its complaint investigation. The state employment service shall cooperate with the Deputy Assistant Secretary in the investigation of any complaint.

(b) *Contents of complaints*—(1) *In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) Documentation showing that the individual is a special disabled veteran or veteran of the Vietnam era. Such documentation must include a copy of the veteran's form DD–214, and, where applicable, a copy of the veteran's Benefits Award Letter, or similar Department of Veterans Affairs certification, updated within one year prior to the date the complaint is filed, indicating the veteran's level (by percentage) of disability, and whether the veteran has been determined by the Department of Veterans Affairs to have a serious employment handicap under 38 U.S.C. 3106;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* A complaint filed by an authorized representative need not identify by name the person on whose behalf it is filed. The person filing the complaint, however, shall provide OFCCP with the name, address and telephone number of the person on whose behalf it is made, and the other information specified in paragraph (b)(1) of this section. OFCCP shall verify the authorization of such a complaint by the person on whose behalf the complaint is made. Any such

person may request that OFCCP keep his or her identity confidential, and OFCCP will protect the individual's confidentiality wherever that is possible given the facts and circumstances in the complaint.

(c) *Incomplete information.* Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(e) *Resolution of matters.* (1) If the complaint investigation finds no violation of the Act or this part, or if the Deputy Assistant Secretary decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60–250.65(a)(1), the complainant and contractor shall be so notified. The Deputy Assistant Secretary, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Deputy Assistant Secretary will review all determinations of no violation that involve complaints that are not also cognizable under Title I of the Americans with Disabilities Act.

(3) In cases where the Deputy Assistant Secretary decides to reconsider the determination of a Notification of Results of Investigation, the Deputy Assistant Secretary shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration, to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the Act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to § 60–250.62.

§ 60–250.62 Conciliation agreements and letters of commitment.

(a) If a compliance review, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

(b) The term *conciliation agreement* does not include *letters of commitment*, which are appropriate for resolving minor technical deficiencies.

§ 60–250.63 Violation of conciliation agreements and letters of commitment.

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

(d) When OFCCP believes that a letter of commitment has been violated, the matter shall be handled, where appropriate, pursuant to § 60–250.64. The violation may be corrected through a conciliation agreement, or an enforcement proceeding may be initiated.

§ 60–250.64 Show cause notices.

When the Deputy Assistant Secretary has reasonable cause to believe that the contractor has violated the Act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (see § 60–250.65).

§ 60–250.65 Enforcement proceedings.

(a) *General.* (1) If a compliance review, complaint investigation or other review by OFCCP finds a violation of the Act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above in this sentence. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance review. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Deputy Assistant Secretary may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–250.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the Act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60–30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: *Provided,* That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of exceptions and responses to exceptions to such decision (if any), whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights, Regional Solicitors and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR Part 60–30 to ''Executive Order 11246'' shall mean the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; to ''equal opportunity clause'' shall mean the equal opportunity clause published at 41 CFR 60–250.5; and to ''regulations'' shall mean the regulations contained in this part.

§ 60–250.66 Sanctions and penalties.

(a) *Withholding progress payments.* With the prior approval of the Deputy Assistant Secretary so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the Act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the Act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the Act or this part subject to reinstatement pursuant to § 60–250.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months but no more than three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

§ 60–250.67 Notification of agencies.

The Deputy Assistant Secretary shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

§ 60–250.68 Reinstatement of ineligible contractors.

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the Act may request reinstatement in a letter filed with the Deputy Assistant Secretary at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Deputy Assistant Secretary also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance review of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Deputy Assistant Secretary's decision. The petition shall be served on the Deputy Assistant Secretary and the Associate Solicitor for Civil Rights and shall include the decision as an appendix. The Deputy Assistant Secretary may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

§ 60–250.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against, any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the Act or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era;

(3) Opposing any act or practice made unlawful by the Act or this part or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era; or

(4) Exercising any other right protected by the Act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the Deputy Assistant Secretary against any contractor who violates this obligation.

§ 60–250.70 Disputed matters related to compliance with the Act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the Act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E—Ancillary Matters

§ 60–250.80 Responsibilities of state employment service offices.

(a) Local state employment service offices shall refer qualified special disabled veterans and veterans of the Vietnam era to fill employment openings listed by contractors with such local offices pursuant to the mandatory listing requirements of the equal opportunity clause, and shall give priority to special disabled veterans and veterans of the Vietnam era in making such referrals.

(b) Local state employment service offices shall contact employers to solicit the job orders described in paragraph (a) of this section. The state employment service shall provide OFCCP upon request information pertinent to whether the contractor is in compliance with the mandatory listing requirements of the equal opportunity clause.

§ 60–250.81 Recordkeeping.

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of

pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance review has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance review or action until final disposition of the complaint, compliance review or action. The term *personnel records relevant to the complaint, compliance review or action* would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Failure to preserve records.* Failure to preserve complete and accurate records as required by paragraph (a) of this section constitutes noncompliance with the contractor's obligations under the Act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided,* That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control. (c) The requirements of this section shall apply only to records made or kept on or after [60 days after date of publication of final rule].

§ 60–250.82 Access to records.

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance reviews and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the Act or this part. Information obtained in this manner shall be used only in connection with the administration of the Act and in furtherance of the purposes of the Act.

§ 60–250.83 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, the Department of Veterans Affairs, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the Act.

§ 60–250.84 Rulings and interpretations.

Rulings under or interpretations of the Act and this part shall be made by the Deputy Assistant Secretary.

§ 60–250.85 Effective date.

This part shall become effective on [60 days after date of publication of final rule], and shall not apply retroactively. Contractors presently holding Government contracts shall update their affirmative action programs as required to comply with the regulations in this part within 120 days after [60 days after date of publication of final rule].

Appendix A to Part 60–250—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR Part 1630). Although the following discussion is intended to provide an independent ''free-standing'' source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. See § 60–250.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under VEVRAA, like reasonable accommodation required under Section 503 and the ADA, is a part of the nondiscrimination obligation. *See* EEOC appendix cited in this paragraph. Affirmative action is unique to VEVRAA and Section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor *shall* make an inquiry of a special disabled veteran who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an ''otherwise qualified'' special disabled veteran, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60–250.2(o), a special disabled veteran is qualified if he or she satisfies all the skill, experience, education and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the special disabled veteran is qualified with respect to that process. One is ''otherwise qualified'' if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees who are known to be special disabled veterans. As stated in § 60–250.42 (see also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they begin their employment duties, to indicate whether they are covered by the Act and wish to benefit under the contractor's affirmative action program. That section further provides that the contractor should seek the advice of special disabled veterans who ''self-identify'' in this way as to proper placement and appropriate accommodation. Moreover, § 60–250.44(d) provides that if an employee who is a known special disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables a special disabled veteran to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee

who is a special disabled veteran in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the ''best'' accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) accommodations in the application process; (2) accommodations that enable employees who are special disabled veterans to perform the essential functions of the position held or desired; and (3) accommodations that enable employees who are special disabled veterans to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term ''undue hardship'' refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, e.g., the Department of Veterans Affairs or a state vocational rehabilitation agency, or if Federal, state or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the special disabled veteran should be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. Section 60–250.2(r) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the special disabled veteran in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate state vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–EEOC (voice), 1–800–800–3302 (TDD)), the Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (1–800–JAN–7234), private disability organizations (including those that serve veterans), and other employers.

6. With respect to accommodations that can permit an employee who is a special disabled veteran to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and braille or large-print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and telecommunications devices for the deaf (TDDs). For persons with limited physical dexterity, the obligation may require the provision of goose neck telephone headsets, mechanical page turners and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by special disabled veterans—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in § 60–250.2(r) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified special disabled veteran cannot perform to another position. Accordingly, if a clerical employee who is a special disabled veteran is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, i.e., those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind special disabled veteran with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the special disabled veteran. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit special disabled veterans who cannot work a standard schedule because of the need to obtain medical treatment, or special disabled veterans with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the special disabled veteran's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider applicants who are known special disabled veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees who are special disabled veterans by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A ''reasonable amount of time'' should be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned special disabled veteran at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not special disabled veterans. It should also be noted that the contractor is not required to promote a special disabled veteran as an accommodation.

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to special disabled veterans who are vision or hearing impaired, e.g., by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations, e.g., extending regular time deadlines, allowing a special disabled veteran who is blind or has a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her ability, to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices; and (4) ensuring a special disabled veteran with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

Appendix B to Part 60–250—Sample Invitation To Self-Identify

Note: When the invitation to self-identify is being extended prior to an offer of employment, as is permitted in limited circumstances under §§ 60–250.42 (b) and (c), paragraph 2(ii) of this appendix, relating to identification of reasonable accommodations, should be omitted. This will avoid a conflict with the EEOC's ADA Guidance, which in most cases precludes asking a job applicant (prior to a job offer being made) about potential reasonable accommodations.

[Sample Invitation to Self-Identify]

1.a. This employer is a Government contractor subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, which requires Government contractors to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. If you are a special disabled veteran or veteran of the Vietnam era and would like to be considered under the affirmative action program, please tell us. You may inform us of your desire to benefit under the program at this time and/or at any time in the future.

b. The term ''special disabled veteran'' refers to a veteran who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability rated at 30 percent or more, or rated at 10 or 20 percent in the case of a veteran who has been determined by the Department of Veterans Affairs to have a serious employment handicap. The term also refers to a person who was discharged or released from active duty because of a service-connected disability.

c. The term ''veteran of the Vietnam era'' refers to a person who served on active duty for more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released with other than a dishonorable discharge. It also refers to a person who was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

d. If you are a special disabled veteran, this information will assist us in placing you in an appropriate position and in making accommodations for your disability. [The contractor should here insert a brief provision summarizing the relevant portion of its affirmative action program.]

e. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. Information you submit will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of special disabled veterans, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if the condition might require emergency treatment; and (iii) Government officials engaged in enforcing laws administered by OFCCP or the Americans with Disabilities Act, may be informed. The information provided will be used only in ways that are not inconsistent with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

2. If you are a special disabled veteran or a veteran of the Vietnam era, we would like to include you under the affirmative action program. If you are a special disabled veteran it would assist us if you tell us about (i) any special methods, skills, and procedures which qualify you for positions that you might not otherwise be able to do because of your disability so that you will be considered for any positions of that kind, and (ii) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, provision of personal assistance services or other accommodations.

Appendix C to Part 60–250—Review of Personnel Processes

The following is a set of procedures which contractors may use to meet the requirements of § 60–250.44(b):

1. The application or personnel form of each known applicant who is a special disabled veteran or veteran of the Vietnam era should be annotated to identify each vacancy for which the applicant was considered, and the form should be quickly retrievable for review by the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

2. The personnel or application records of each known special disabled veteran or veteran of the Vietnam era should include (i) the identification of each promotion for which the covered veteran was considered, and (ii) the identification of each training program for which the covered veteran was considered.

3. In each case where an employee or applicant who is a special disabled veteran or a veteran of the Vietnam era is rejected for employment, promotion, or training, a statement of the reason should be appended to the personnel file or application form as well as a description of the accommodations considered (for a rejected special disabled veteran). This statement should be available to the applicant or employee concerned upon request.

4. Where applicants or employees who are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible for him or her to place a special disabled veteran on the job, the application form or personnel record should contain a description of that accommodation.

[FR Doc. 96–23638 Filed 9–23–96; 8:45 am]
BILLING CODE 4510–27–P

Federal Register

Tuesday
September 24, 1996

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Definition of Bid and Proposal Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 93–018]

RIN 9000–AG58

Federal Acquisition Regulation; Definition of Bid and Proposal Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have decided to withdraw FAR Case 93–018, Definition of Bid and Proposal Costs, published in the Federal Register at 60 FR 43508, August 21, 1995. The rule proposed revisions to the definition of bid and proposal (B&P) costs to clarify that B&P costs related to all types of funding instruments (e.g., contracts, grants, cooperative agreements, and other similar types of agreements) are allowable costs.

As a result of the public comments received in response to the proposed rule, the Councils have determined that the existing FAR definition of B&P costs should not be changed to avoid potential conflicts with cost accounting standards; imposing unnecessary changes in certain contractor accounting practices; and possible misinterpretations of the proposed B&P cost definition.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at 202–501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 93–018, withdrawal.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 17, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–24183 Filed 9–23–96; 8:45 am]

BILLING CODE 6820–EP–M

Federal Register

Tuesday
September 24, 1996

Part IV

Department of Energy

Federal Energy Regulatory Commission

Order Issuing Revised OASIS Standards and Protocols Document; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–000]

Open Access Same-time Information System and Standards of Conduct; Order Issuing Revised OASIS Standards and Protocols Document

Issued: September 10, 1996.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

As announced in Order No. 889,[1] after consideration of suggested changes advanced by the How Working Group and other interested persons, we are issuing revisions to the standards and formats for OASIS sites prescribed in the OASIS Standards and Protocols document.[2] This action is not intended to prejudge any of the substantive issues raised in the pending requests for rehearing filed in response to Order No. 8890.[3]

Background

In Order No. 889, we stated that it is essential to establish standards and protocols that will ensure that the OASIS presents information in a consistent and uniform manner. However, in Order No. 889 we recognized that the initial standards and formats contained in the Standards and Protocols document are not complete and require further development. Accordingly, we invited the How Working Group—an industry led coalition of diverse interests established by the industry to develop consensus on ''how'' to develop an OASIS—to review the document and report to us on its progress in correcting any deficiencies in the document.[4] We also stated that, after reviewing the additional report we anticipated receiving from the How Working Group (along with comments from any interested person), we would issue a revised Standards and Protocols document as soon as possible thereafter, to allow transmission providers to implement operational Phase I OASIS sites by November 1, 1996. 61 FR at 21738, 21755–56.

As requested, on June 7, 1996, the How Working Group submitted a report presenting its suggested edits to the initial standards and Protocols document. On June 11, 1996, the Commission provided notice that the How Working Group's June 7, 1996 report was available for public review and comment.

The How Working Group continued its efforts to reach consensus and, on July 3, 1996, submitted a report suggesting further changes to the Standards and Protocols document.

On July 5, 1996, the Joint Transmission Service Information Network (JTSIN) filed comments suggesting revisions to the version of the Standards and Protocols document put out for comment on June 11, 1996. On July 19, 1996, Power System Engineering Inc. (PSE) filed comments on this same document.

On July 31, 1996, in response to the JTSIN comments, the How Working Group submitted corrections to its earlier submittal, suggesting further changes to the Standards and Protocols document. These corrections incorporate suggestions made by JTSIN and are endorsed by JTSIN.

The How Working Group requests that he Commission quickly release a revised Standards and Protocols document or grant a delay in the startup date for Phase I OASIA compliance. The How Working Group states that it avoided suggesting more substantive changes to OASIS functionality or design because it was not possible to evaluate changes of this type (and reach consensus) while meeting the Commission's November 1, 1996 startup date for Phase I OASIS implementation.

Discussion

The successive submittals from the How Working Group added further refinements and improvements with each iteration. Our review, therefore, will concentrate on the group's latest iteration, submitted on July 31, 1996.[5] We find that these revisions greatly improve the OASIS Standards and Protocols document that accompanied issuance of Order No. 889, by resolving additional issues and by harmonizing the text to determinations made in Order No. 889. Therefore, with the minor exceptions noted below, we will issue a revised Standards and Protocols document consistent with the How Working Group's recommendations.[6]

Turning to the July 31, 1996 How Working Group report, we find that it has been improved to the extent that it now requires only a few minor revisions. First, in various places in the Standards and Protocols document, we will replace the term ''customer'', used by the How Working Group, with the term ''user'', whenever the group being referenced includes OASIS users who may not be customers.[7]

Second, we have revised the suggested language in § 3.4(d) to match more closely the language in Order No. 889 that requires the Transmission Provider to post information about resales on the same display page, using the same tables, as similar capacity being sold by it.

Third, in § 3.4(h), we have not included the proposed change from ''90 days'' to ''10 days'' because we reserve the issue of whether to revise the retention period for on-line audit log postings for the order we will issue addressing the pending requests for rehearing.

Additionally, we have made several minor edits for clarity or simplicity. Specifically, under § 2.1(c) we have changed ''chose'' to ''choose'' as the present tense better fits this sentence. In § 3.6(b), we deleted ''once again'' as unnecessary. In § 4.1.1(a), we added ''providing'' for clarity. In § 4.2.1(a), we changed ''to'' to ''with''. In the example at the end of § 4.2.1(c), we changed ''time'' to ''endtime'' to agree with the Data Element Dictionary. We made the same change in the example of a query in §§ 4.4.1 and 4.4.2. In § 5.7, we changed ''Buy/Sell'' to ''Purchase'' to better match Order No. 889.

We have also made several nonsubstantive revisions to the Data Element Dictionary for clarity. Specifically, under the definition of ''CUSTOMER–DUNS'' restricted values, we have added ''DUNS''. Under ''DATA–ROWS'' restricted values, we have changed ''Number or numbers'' to ''Positive Number''. Under ''SERVICE—DESCRIPTION'' definition of data element, we have changed ''Inform'' to ''Information''. Under ''STATUS''

[1] Open Access Same-Time Information System and Standards of Conduct, Final Rule, Order No. 889, FERC Stats. & Regs. ¶ 31,037, 61 FR 21737 (May 10, 1996).

[2] This is the short title for Standards and Communication Protocols for Open Access Same-Time Information System (OASIS) and accompanying Data Element Dictionary, 61 FR at 21770–21846, appended to Order No. 889.

[3] We reserve the right to make further modifications to the Standards and Protocols document as necessary to conform to our determinations on rehearing.

[4] 61 FR at 21740–41, 21762. We also directed the How Working Group to attach any comments it received from any interested persons with opposing views.

[5] As this iteration fully addresses JTSIN's comments, includes revisions based on JTSIN's comments, and has been endorsed by JTSIN, we need not separately address JTSIN's comments.

[6] We also are attaching a version of the revised Standards and Protocols document that shows the changes that we are making to the How Working Group's July 31, 1996 report. This attachment is not being published in the Federal Register but is available through the Commission Issuance Posting System (see, *infra,* n.9) and from the Commission's Public Reference Room.

[7] See Standards and Protocols document in the Table of Contents at § 3.6 and in the text at §§ 3.3(c), 3.4(a), 3.4(b), 3.4(e), 3.4(h), 3.5(b), 3.6, 4.2.4.2(2), 4.3, 4.3.2(a), 4.3.3(a), 5.3, 5.6, 5.9(b), and 5.10(a).

restricted values, we have deleted the references to ''reassigned'', ''scheduled'', and ''curtailed'' so that the values match the categories in the definition of data element. Under the Field Format for SELLER–DUNS, we have changed the maximum number of characters to 9 to agree with the maximum number of characters for other DUNS numbers.

Turning to the comments from PSE, a participant in the How Working Group process, its comments were submitted as ''informal comments'' to Staff that, with PSE's approval, were added to the public record in this proceeding.

In their comments, PSE points out that Section I of the Standards and Protocols document, which discusses the purposes of OASIS, does not include customers requesting service through an OASIS. We have modified the language to include this function. The remaining issues raised by PSE, such as OASIS access and registration issues, do not relate solely to the contents of the Standards and Protocols document. Rather, they concern issues that, in our judgment, involve Phase II implementation, which we will consider later, or relate to issues pending on rehearing of Order No. 889.[8]

The revised Standards and Protocols document will be made available at the Commission's Public Reference Room and will be published in the Federal Register. It also will be available through the Commission Issuance Posting System (CIPS), which can be reached by telephone (modem dialup) at 1–800–856–3920.[9] Dialing this number gives the caller a menu, from which the caller can choose CIPS or other menu choices.

BILLING CODE 6717–01–M

[8] In Order No. 889, see 61 FR at 21741, the Commission discussed its preference for consensus recommendations on technical implementation issues. We encourage future commenters to consider bringing their ideas to the How Working Group for its consideration in the first instance, so that ideas can be screened and improved through peer review, before being addressed by the Commission.

[9] If you encounter problems in accessing CIPS, you may call 202–208–2474 to seek assistance. CIPS also can be accessed via the FedWorld system through dialup modems or over the Internet.

By modem:

Dial 703–321–3339 and logon to the FedWorld system. After logging on to the FedWorld system, choose f. Government and Regulatory and then type: /go FERC.

By Internet:

Option 1

Telnet to: fedworld.gov, Select [1] FedWorld option, Logon to the FedWorld system, Choose f. Government and Regulatory, Type: /go FERC.

Option 2

Point your Web Browser to: http://www.fedworld.gov, Scroll down the page to select FedWorld Telnet Site, Select [1] FedWorld option, Logon to the FedWorld system, Choose f. Government and Regulatory, Type: /go FERC.

Docket No. RM95-9

Form Approved
OMB No. 1902-0173
Expires February 28, 1999

FEDERAL ENERGY REGULATORY COMMISSION

STANDARDS

AND

COMMUNICATION PROTOCOLS

FOR

OPEN ACCESS SAME-TIME INFORMATION SYSTEM

(OASIS)

Version 1.1

(September 5, 1996)

The public burden for the development and initial operation of this information requirement is estimated to average 1,879 reporting hours and 418 record keeping hours per public utility. The estimate includes the time required to review and implement the standards, develop the necessary software, search existing data sources, gather and maintain the data, complete and review the information. Send comments regarding this burden estimate or any other aspect of this information requirement, including suggestions for reducing the burden, to each of the following:

Federal Energy Regulatory Commission
Attention: Michael Miller, Information Services Division
888 First Street, N.E.
Washington, DC 20426

Office of Management and Budget
Office of Information and Regulatory Affairs
Attention: Desk Officer for the Federal Energy Regulatory Commission
Washington, DC 20503

You shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

TABLE OF CONTENTS

GENERAL INFORMATION

GENERAL INFORMATION

I. Purpose

In Order No. 888 the Commission requires public utilities to provide comparable access to transmission services and transmission system information. Order No. 889 amends the Commission's regulations, by adding 18 CFR Section 37, to require utilities to provide information about the availability of transmission service on an Open Access Same-Time Information System (OASIS). This information will be provided both through displays and through standardized files that users can download to their own computers. Certain information will also be uploaded through standardized forms and files transmitted from Customers' computers to the OASIS. The file uploads will allow customers to request primary transmission service. They also will allow customers to request transmission service for resale and ancillary services. The regulations require public utilities to comply with standardized procedures and communication protocols governing the means by which the information is made available. This document contains the standardized data sets that show the information that must be provided, standard operating procedures and the protocols for communication of that information.

II. Who Must Comply

All jurisdictional public utilities that are required to maintain an OASIS under Part 37 of the Commission's regulations must comply with these standards and communication protocols.

III. Implementation Date

Utilities must implement these standards and protocols by November 1, 1996.

IV. Development Of The Standards And Communication Protocols

The standards and communication protocols were developed by the electric utility industry through a working group facilitated by the Electric Power Research Institute. This working group included representatives from all major segments of the electric utility industry, such as utilities and marketers, as well as other interested parties such as computer and software firms. The standards and communication protocols represent a broad agreement of the working group.

As the industry obtains experience with OASIS and the new operating environment created by Order No. 888, the standards and communication protocols will need to be revised. The Commission has requested the industry to continue to develop standards and identify necessary changes. The Commission will provide all interested parties with notice and an opportunity for comment on proposed changes to this document.

V. OASIS STANDARDS AND COMMUNICATION PROTOCOLS

1. INTRODUCTION

1.1 DEFINITION OF TERMS

The following definitions are offered to clarify discussions of the OASIS in this document.

a. **Transmission Services Information (TS Information)** is transmission and ancillary services information that must be made available by public utilities on a non-discriminatory basis to meet the regulatory requirements of transmission open access.

b. **Open Access Same-Time Information System (OASIS)** comprises the computer systems and associated communications facilities that public utilities are required to provide for the purpose of making available to all transmission users comparable interactions with TS Information.

c. **Open Access Same-Time Information System Node (OASIS Node)** is a subsystem of the OASIS. It is one computer system in the (OASIS) that provides access to TS Information to a Transmission Customer.

d. **Transmission Provider (TP or Primary Provider)** is the public utility (or its designated agent) that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce. (This is the same term as is used in Part 35.3).

e. **Transmission Customer (TC or Customer)** is any eligible Customer (or its designated agent) that can or does execute a transmission service agreement or can or does receive transmission service. (This is the same term as is used in Part 35.3).

f. **Secondary Transmission Provider (ST, Reseller, or Secondary Provider)** is any Customer who offers to sell transmission capacity it has purchased. (This is the same as Reseller in Part 37).

g. **Transmission Services Information Provider (TSIP)** is a Transmission Provider or an agent to whom the Transmission Provider has delegated the responsibility of meeting any of the requirements of Part 37. (This is the same as Responsible Party in Part 37).

h. **Value-Added Transmission Services Information Provider (VTSIP)** is an entity who uses TS Information in the same manner as a Customer and provides value-added information services to its Customers.

2. NETWORK ARCHITECTURE REQUIREMENTS

2.1 ARCHITECTURE OF OASIS NODES

a. **Permit Use of Any OASIS Node Computers:** TSIPs shall be permitted to use any computer systems as an OASIS Node, so long as they meet the OASIS requirements.

b. **Permit Use of Any Customer Computers:** OASIS Nodes shall permit the use by Customers of any commonly available computer systems, as long as they support the required communication links to the Internet.

c. **Permit the Offering of Value-Added Services:** TSIPs are required, upon request, to provide their Customers the use of private network connections on a cost recovery basis. Additional services which are beyond the scope of the minimum OASIS requirements are also permitted. When provided, these private connections and additional services shall be offered on a fair and non-discriminatory basis to all Customers who might choose to use these services.

d. **Permit Use of Existing Communications Facilities:** In implementing the OASIS, the use of existing communications facilities shall be permitted. The use of OASIS communication facilities for the exchange of information beyond that required for open transmission access (e.g., transfer of system security or operations data between regional control centers) shall also be permitted, provided that such use does not negatively impact the exchange of open transmission access data and is consistent with the Standards of Conduct in Part 37.

e. **Single or Multiple Providers per Node:** An OASIS Node may support a single individual Primary Provider (plus any Secondary Providers) or may support many Primary Providers.

2.2 INTERNET-BASED OASIS NETWORK

a. **Internet Compatibility:** All OASIS Nodes shall support the use of internet tools, internet directory services, and internet communication protocols necessary to support the Information Access requirements stated in Section 4.

b. **Connection through the Public Internet:** Connection of OASIS Nodes to the public Internet is required so that Users may access them through Internet links. This connection shall be made through a firewall to improve security.

c. **Connection to a Private Internet Network:** OASIS Nodes shall support private connections to any OASIS User (User) who requests such a connection. The TSIP is permitted to charge the User, based on cost, for these connections. The same internet tools shall be required for these private networks as are required for the public

Internet. Private connections must be provided to all users on a fair and nondiscriminatory basis.

d. **Internet Communications Channel:** The OASIS Nodes shall utilize a communication channel to the Internet which is adequate to support the performance requirements given the number of Users subscribed to the Providers on the Node (see section 5.3).

2.3 COMMUNICATION STANDARDS REQUIRED

a. **Point-to-Point Protocol (PPP) and Internet Protocol Control Protocol (IPCP)** (reference RFCs 1331 and 1332) shall be supported for private internet network dial-up connections.

b. **Serial Line Internet Protocol (SLIP)** (reference RFC 1055) shall be supported for private internet network dial-up connections.

c. **Transport Control Protocol and Internet Protocol (TCP/IP)** shall be the only protocol set used between OASIS Nodes whenever they are directly interconnected, or for Users using private leased line internet network connections.

d. **Hyper Text Transport Protocol (HTTP)** shall be supported on the OASIS Node so that Users can use it to select information for viewing displays and for downloading and uploading files electronically.

e. **Internet Protocol Address:** All OASIS Nodes are required to use an IP address registered with the Internet Network Information Center (InterNIC), even if private connections are used.

2.4 INTERNET TOOL REQUIREMENTS

Support for the following specific internet tools is required, both for use over the public Internet as well as for any private connections between Users and OASIS Nodes:

a. **Hypertext Markup Language (HTML),** at least version 3, and optionally Secure Sockets Layer (SSL), shall be used by TSIPs as a standard tool for presenting information to Users.

b. **HTML Forms** shall be provided by the TSIPs to allow Customers to enter information to the OASIS Node.

c. **Domain Name Service (DNS)** (ref. RFC 1034, 1035) shall be provided as a minimum by the TSIPs (or their Internet Service Provider) for the resolution of IP addresses to allow Users to navigate easily between OASIS Nodes.

d. **Simple Network Management Protocol (SNMP)** is recommended but not required to provide tools for operating and managing the network, if private interconnections between OASIS Nodes are established.

e. **The Primary Provider shall support E-mail** for exchanges with Customers, including the sending of attachments. The protocols supported shall include, as a minimum, the Simple Messaging Transfer Protocol (SMTP), Post Office Protocol (POP), and Multipurpose Internet Mail Extensions (MIME).

2.5 NAVIGATION AND INTERCONNECTIVITY BETWEEN OASIS NODES

a. **World Wide Web Browsers:** TSIPs shall permit Users to navigate using WWW browsers for accessing different sets of TS Information from one Provider, or for getting to TS Information from different Providers on the same OASIS Node. These navigation methods shall not favor User access to any Provider over another Provider, including Secondary Providers.

b. **Internet Interconnection across OASIS Nodes:** Navigation tools shall not only support navigation within the TSIP's Node, but also across interconnected OASIS Nodes. This navigation capability across interconnected Nodes shall, as a minimum, be possible through the public Internet.

3. INFORMATION ACCESS REQUIREMENTS

3.1 REGISTRATION AND LOGIN REQUIREMENTS

a. **Location of Providers:** To provide Users with the information necessary to access the desired Provider, all Primary Providers shall register their OASIS Node URL address with www.tsin.com. This URL address should include the unique four letter acronym the Primary Provider will use as the PRIMARY_PROVIDER_CODE.

b. **Initial User Registration:** TSIPs shall require Users to register with a Primary Provider before they are permitted to access the Provider's TS Information. There must be a reference pointing to registration procedures on each Primary Provider's home page. Registration procedures may vary with the administrative requirements of each Primary Provider.

c. **Initial Access Privileges:** Initial registration shall permit a User only the minimum Access Privileges. A User and a Primary Provider shall mutually determine what access privilege the User is permitted: the TSIP shall set a User's Access Privilege as authorized by the Primary Provider.

d. **User Login:** After registration, Users shall be required to login every time they establish a dial-up connection. If a direct, permanent connection has been established,

Users shall be required to login initially or any time the connection is lost. Use of alternative forms of login and authentication using certificates and public key standards is acceptable.

e. **User Logout:** Users shall be automatically logged out any time they are disconnected. Users may logout voluntarily.

3.2 SERVICE LEVEL AGREEMENTS

Service Level Agreements: It is recognized that Users will have different requirements for frequency of access, performance, etc., based on their unique business needs. To accommodate these differing requirements, TSIPs shall be required to establish a "Service Level Agreement" with each User which specifies the terms and conditions for access to the information posted by the Providers. The default Service Level Agreement shall be Internet access with the OASIS Node meeting all minimum performance requirements.

3.3 ACCESS TO INFORMATION

a. **Display:** TSIPs shall format all TS Information in HTML 3.0 format such that it may be viewed and read directly by Users without requiring them to download it. This information shall be in clear English as much as possible, with the definitions of any mnemonics or abbreviations available on-line. The minimum information that is to be displayed is provided in the templates in Section 4.3.

b. **Read-Only Access to TS Information:** For security reasons, Users shall have read-only access to the TS Information. They shall not be permitted to enter any information except where explicitly allowed, such as HTML transaction request forms or by the templates in Section 4.3.

c. **Downloading Capability:** Users shall be able to download from an OASIS Node the TS Information in electronic format as a file. The rules for formatting of this data are described in Section 4.2.

d. **On-Line Data Entry on Forms:** Customers shall be permitted to fill out on-line the HTML forms supplied by the TSIPs, for requesting the purchase of services and for posting of products for sale (by Customers who are resellers). Customers shall also be permitted to fill-out and post Want-Ads.

e. **Uploading Capability:** Customers shall be able to upload to OASIS Nodes the filled-out forms. TSIPs shall ensure that these uploaded forms are handled identically to forms filled out on-line. TSIPs shall provide forms that support the "file" input type available in HTML 3.0. This capability shall permit a Customer to upload a file (or

files) using standard Web browsers by providing an input space to specify a file stored on the Customer's hard disk.

f. **Selection of TS Information:** Users shall be able to dynamically select the TS Information they want to view and/or download. This selection shall be, as a minimum, through navigation to text displays, the use of pull-down menus to select information for display, data entry into forms for initiating queries, and the selection of files to download via menus.

3.4 PROVIDER UPDATING REQUIREMENTS

The following are the Provider update requirements:

a. **Provider Posting of TS Information**: Each Provider (including Secondary Providers and Value-Added Providers) shall be responsible for writing (posting) and updating TS Information on their OASIS node. No User shall be permitted to modify a Provider's Information.

b. **OASIS Node Space for Secondary Provider**: To permit Users to readily find TS Information for the transmission systems that they are interested in, TSIPs shall provide database space on their OASIS Node for all Secondary Providers who have purchased, and who request to resell, transmission access rights for the power systems of the Primary Providers supported by that Node.

c. **Secondary Provider Posting to Primary Provider Node**: The Secondary Providers shall post the relevant TS Information on the OASIS Node associated with each Primary Provider from whom the transmission access rights were originally purchased.

d. **Secondary Provider Posting Capabilities**: The TSIPs shall ensure that the Secondary Providers shall be able to post their TS Information to the appropriate OASIS Nodes using the same tools and capabilities as the Customers, meet the same performance criteria as the Primary Providers, and allow users to view these postings on the same display page, using the same tables, as similar capacity being sold by the Primary Providers.

e. **Free-Form Posting of non-TS Information**: The TSIP shall ensure that non-TS Information, such as Want-Ads, may be posted by Providers and Customers, and that this information is easily accessible by all Users. The TSIP shall be allowed to limit the volume and/or to charge for the posting of non-TS Information.

f. **Time Stamps**: All TS Information shall be associated with a time stamp to show when it was posted to the OASIS Node.

g. **Transaction Tracking by an Assignment Reference Number**: All requests for purchase of transmission or ancillary services will be marked by a unique accounting number, called an assignment reference.

h. **Time-Stamped OASIS Audit Log**: All posting of TS Information, all updating of TS Information, all User logins and disconnects, all User download requests, all Service Requests, and all other transactions shall be time stamped and stored in an OASIS Audit Log. This OASIS Audit Log shall be the official record of interactions, and shall be maintained on-line for download for at least 90 days. Changes in the values of posted Capacity (Available Transfer Capability) must be stored in the on-line Audit Log for 90 days. Audit records must be maintained for 3 years off-line and available in electronic form within seven days of a Customer request.

i. **Studies:** A summary description with dates, and programs used of all transmission studies used to prepare data for the Primary Provider's ATC and TTC calculation will be provided along with information as to how to obtain the study data and results.

3.5 ACCESS TO CHANGED INFORMATION

a. **General Message & Log:** TSIPs shall post a general message and log that may be read by Users. The message shall state that the Provider has updated some information, and shall contain (or point to) a reverse chronological log of those changes. This log may be the same as the Audit Log. The User may use the manual capability to see the message.

b. **TSIP Notification Design Responsibilities:** The TSIP shall avoid a design that could cause serious performance problems by necessitating frequent requests for information from many Users.

3.6 USER INTERACTION WITH AN OASIS NODE

There are three basic types of User interactions which must be supported by the OASIS Node. These interactions are defined in Section 4.3.

a. **Query/Response:** The simplest level of interactions is the query of posted information and the corresponding response. The User may determine the scope of the information queried by specifying values, through a HTML form, a URL or an uploaded file, using Query Variables and their associated input values as defined with each template in Section 4.3. The response will be either a HTML display or a record oriented file, depending on the output format that the User requests.

The TSIP may establish procedures to restrict the size of the response, if an overly broad query could result in a response which degrades the overall performance of the OASIS Node for their Users.

b. **Purchase Request:** The second type of Customer interaction is the submittal of a request to purchase a service. The Customer completes an input form, a URL string or uploads a file and submits it to the OASIS Node. The uploaded file can either be a series of query variables or a record oriented file.

The request is processed by the Seller of the service, possibly off-line from the OASIS Node, and the status is updated accordingly.

If a purchase request is approved by the Seller, then it must be again confirmed by the Customer. Once the Customer confirms an approved purchase, a reservation for those services is considered to exist, unless later the reservation is reassigned or displaced.

c. **Upload and Modify Postings:** Customers who wish to resell their rights may upload a form, create the appropriate URL or upload a file to post services for sale. A similar process applies to eligible Third Party Sellers of ancillary services. The products are posted by the TSIP. The seller may monitor the status of the services by requesting status information. Similarly the Seller may modify its posted transmission services by submitting a service modification request through a form, a URL query or by uploading a file.

4. INTERFACE REQUIREMENTS

4.1 INFORMATION MODEL CONCEPTS

4.1.1 ASCII-Based Information Model

a. **ASCII-Based OASIS Templates:** For providing information to Users, TSIPs shall use the specified OASIS Templates. These Templates define the information which, as a minimum, must be presented to Users, both in the form of graphical displays and as downloaded files. Users shall be able to request Template information using query-response data flows. The OASIS Templates are described in section 4.3. The Data Element Dictionary, which defines the data elements in the OASIS Templates, is provided in Appendix A.

Additional information may be presented in a display or a file at the discretion of the TSIP. However, no User shall be obligated or expected to recognize or use this additional information. As stated above, although the minimal contents of the displays are precisely defined, the actual graphical display formats of the TS information are beyond the scope of the OASIS requirements.

b. **ASCII-Based OASIS File Structures:** For uploading requests from and downloading information to Users, TSIPs shall use specific file structures that are defined for

OASIS Template information (see section 4.2). These file structures are based on the use of headers which contain the Query Variable information, including the name of the OASIS Template. These headers thus determine the contents and the format of the data that follows.

4.2 OASIS NODE CONVENTIONS AND STRUCTURES

4.2.1 OASIS Node Naming Requirements

The following are the OASIS Node naming requirements:

a. **Node Naming Convention:** In order to provide a consistent method for locating an OASIS Node, the standard Internet naming convention shall be used. All OASIS Node names shall be unique. Each Primary Provider OASIS Node and home directory shall be registered with the OASIS Management Organization at the web site http://www.tsin.com. OASIS Node names shall be stored in a DNS name directory, which shall be accessible by Users as an HTML page.

b. **URL Structure:** The OASIS Node naming conventions shall use standard URL structures.

c. **Primary Provider Node Home Directory:** The home directory name on an OASIS Node shall be "OASIS" to identify that the directory is related to the OASIS. The directory of each Primary Provider shall be listed under the "OASIS" directory:

http://(OASIS Node name)/OASIS/(PRIMARY_PROVIDER_CODE)

A pointer to registration information shall be located on the Primary Provider's home page.

Common Gateway Interface (CGI) scripts shall be located in the directory "data" as follows:

http://(OASIS Node name)/OASIS/ (PRIMARY_PROVIDER_CODE) /data/(cgi script name)?(query variables)

Where:

(OASIS Node name) is the World Wide Web URL address of the OASIS Information Provider.
PRIMARY_PROVIDER_CODE is the 4 character acronym of the primary provider.
(cgi script name) is the template name or other cgi script name as specified by the Information Provider.
(query variables) a list of query variable with their settings.

Example:

To request the hourly schedule template at Primary Provider WXYZ Co.

http://www.wxyz.com/oasis/wxyz/data/schedule ?templ=schedule& ver=1& fmt=data &btime=19960412040000PD &endtime=19960412100000PD& pprov=wxyz ...

4.2.2 Data Element Dictionary

The following are the requirements for the Data Element Dictionary:

a. **Definition of OASIS Information Elements:** All OASIS Information elements shall be defined in the Data Element Dictionary which will be stored in the OASIS Node directory:

http://(OASIS Node Name)/OASIS/(PRIMARY_PROVIDER_CODE)/(datadic.html | datadict.txt).

Where:

datadic.html is the HTML version of the data element dictionary
datadic.txt is the ASCII text version of the data element dictionary

The Data Element Dictionary is defined in Appendix A.

Some local data element names, such as PATH_NAME, may be unique to Primary Provider. Names which must be uniquely identified by a Primary Provider must be listed on-line on the OASIS Node (see LIST template in Section 4.3) The LIST provides Users with valid names for such properties as Path Name, POR, POD, etc.. In posting OASIS information, TSIPs shall use only the names listed in the Data Element Dictionary and/or a LIST of names provided in the OASIS.

4.2.3 General Rules for OASIS Templates

Section 4.3 lists the set of OASIS Templates. These OASIS Templates are intended to be used precisely as shown for download and upload of data. For on-line display, all relevant information must be provided but flexibility is permitted as to how the data are displayed. The construction of the OASIS Templates shall follow the rules described below:

a. **Unique OASIS Template Name:** Each type of OASIS Template shall be identified with a unique name which shall be displayed to the User whenever the OASIS Template is accessed.

b. **Source Information:** Each OASIS Template shall identify the source of its information by including or linking to the name of the Primary Provider, the Secondary Provider, or the Customer who provided the information.

c. **Time Stamp:** Each OASIS Template shall include a time stamp indicating when it was created or last updated.

d. **Column Headings:** OASIS Template column headings shall define the elementary Data Element Dictionary entries for the data values. The order of the column headings shall define the order that the values are uploaded or downloaded. Within a table, the ordering of some column headings may be selected by Users from pull-down menus. For tables with selectable columns, the number of columns displayed or selected for download shall be determined by entry into a specified field.

e. **Rows:** The table rows below the column headings shall represent the data being presented.

f. **Row Wrap:** If the width of tables is larger than can be displayed in readable size on a single screen, the rows shall either wrap on the screen or shall be accessible through horizontal scrolling.

g. **Documentation:** OASIS Information shall be in non-cryptic English, with all mnemonics defined in the Data Element Dictionary or a glossary of terms. TSIPs shall provide on-line descriptions and help screens to assist Users understanding the displayed information. Documentation of all formats, contents, and mnemonics shall be available both as displays and as files which can be downloaded electronically.

- HTML "Hot-Links" or other pointer mechanisms may be provided for column headings in OASIS Templates which permit the User to access documentation describing the meaning, type, and format of the data in the column.
- HTML "Hot-Links" or other pointer mechanisms may be provided for data in the OASIS Templates to explanations, comments, constraints, and other notes.
- In order to meet the "User-Friendly" goal and permit the flexibility of the OASIS to expand to meet new requirements, the OASIS Templates shall be as self-descriptive as possible.

4.2.4 User Request and Response Procedures

There are four methods that a user can request information or upload data from an OASIS Node.

1. **Using prepared HTML Forms** through a web browser at the Primary Provider's Node. This will be the easiest way to obtain information and should be the choice of most casual users and for simple requests. The input format may differ between nodes.

2. **Using URL strings.** This is an extension of a web address that allows a query string to be appended to the web address of the Primary Provider. This method is useful for creating requests manually or requests bookmarked using the HTML forms and then modified.

3. **Uploading a file containing a URL string.** This method allows a user to prepare a file with query variable similar to information contained in a URL string. This is useful for preparing longer requests or uploading data off-line. If the User uses the input query variables as defined in each template the same query can be used between multiple Primary Providers by only changing the Primary Provider's name in the query.

4. **Uploading a file containing ASCII delimitated template records.** This method allows a user to upload data with information contained in a template in record format. Each file contains a header and then one or more records containing additional template information. This format is consistent with the format that a file can be downloaded. This method would only be used for templates where the request section is marked INPUT.

There are two methods for data to be sent by an OASIS node and received by a User in response to a query.

1. **HTML Displays.** If the User requests the response to have the format of "DISPLAY" then the response from the Primary provider's Node will be a web page using the HTML format. This will be the default for requests that are prepared using HTML forms.

2. **Download File.** If the User requests the response to have the format of "DATA" then the response from the Primary Provider will be a set of data in record format with a header, followed by one or more records containing additional template information.

4.2.4.1 User Request or Data Upload Formats

1. Request or Data Upload using HTML forms

The format of the HTML of the displays is left to the Primary Provider and is not standardized. The content of each template of Section 4.3 must be made available through the displays of applicable data for the Primary Provider's node. The HTML forms will consist of fill in blanks, buttons and pull down displays consistent with HTML Version 3. The forms will produce a query string using the get or post methods. If the get method is used, a User can bookmark the query and reuse it. The query variables used in the HTML forms are not standardized and bookmarked queries may not work across different Primary Providers.

2. Request or Data Uploads using URL strings

All Primary Provider nodes will support standard query variables as indicated in the Input section of each template of Section 4.3. If a User sends a request using a URL string as shown in Section 4.2.1 c, to any Primary Provider then the request for information or data upload will be processed.

A request for information, using a URL string, in an OASIS Template to a User site shall be formatted as follows. A set of header query variables:

VERSION=*nn.n*&
TEMPLATE=*(template name)*&
OUTPUT_FORMAT=aaaa&
PRIMARY_PROVIDER=aaaa&
PRIMARY_PROVIDER_DUNS=nnnnnnnnn&

Followed by Query Variables to specify specific template data. Data elements not specified will take on default values. These additional Query Variables shall be prefixed with an ampersand (&), suffixed with an equal sign (=), and followed by the appropriate parameters.

If repeated, specific values are given for a Query Variable, the variable name will be suffixed with a digit starting with "1" and increasing by one for each repeated variable, for example:

&PATH1=ABC-XYZ &PATH2=ABC-RST

3. Request or Data Uploads using file containing a URL string

A file containing a URL string such as shown in 4.2.1 c can be uploaded using methods such as fetch_http. The format of a URL string is identical to that in the previous method, but the data is contained in a file which can be uploaded.

4. **Upload ASCII Delimited Template Records:** Customers and Providers shall be able to upload OASIS Templates in ASCII code with carriage control and line feed and with no other special embedded codes.

Query Variables or Column Headers shall be used to define what data is being uploaded. Each Query Variable shall be followed by an equals sign (=) and the parameters associated with the variable.

Each record shall be separated by a carriage return plus line feed (↵). The fields within a record shall be delimited by a comma (,). Text fields shall be enclosed with double quotes (").

Every ASCII delimited upload file reflecting an input OASIS Template (as opposed to a query file requesting Template information) shall contain the following header records in the indicated order.

VERSION=*nn.n*↵
TEMPLATE=(template name)↵
OUTPUT_FORMAT=*aaaa*↵
PRIMARY_PROVIDER=*aaaaaaaaaaaaaaaaaaaaaaaa*↵
PRIMARY_PROVIDER_DUNS=*nnnnnnnnn*↵
DATA_ROWS=*nnn*↵
COLUMN_HEADERS=*aaaa.....aaaaaa*↵

The DATA_ROWS record contains the number of data records following the COLUMN_HEADERS.

The COLUMN_HEADERS record contains a column for each field that is required in the Template, in the order shown in the Template. The full template element name should be used in the COLUMN_HEADER, enclosed in double quotes (") and separated by a comma (,), see section 4.4 for examples. The Template information then follows as records which correspond one-to-one with the column headings.

Data Compression: Data compression of large uploaded files shall be supported, using ZIP compression methods.

Default User Directory: The default User directory for upload of files shall be /OASIS/(PRIMARY_PROVIDER_CODE)/upload
Where: PRIMARY_PROVIDER_CODE is the 4 character acronym of the Primary Provider.

Examples of these request and responses are shown in Section 4.4.

4.2.4.2 Response File Format and Procedures

1. HTML Displays

The format of the HTML displays are left to the Primary Provider. The content of the displays must have as a minimum the information contained in the templates of Section 4.3.

2. Downloaded Data Files

The response to a request for the download of Template information into a file at the User site shall conform to the following rules:

a. Download ASCII Delimited Files: Users shall always be able to download all OASIS Template information in ASCII with no special embedded codes, other than carriage control and line feed.

Query Variables shall be used to define what data is being downloaded. Each Query Variable (containing the response to the query) shall be followed by an equal sign (=) and the parameters associated with the variable.

Each downloaded record shall be separated by a carriage return plus line feed (↵). The fields within a record shall be delimited by a comma (,). Text fields shall be enclosed with double quotes (").

b. Data Compression: Data compression of downloadable files shall be supported, at least for static files, using ZIP compression methods.

c. Non-ASCII Formats: Formats in addition to ASCII may be used (at the TSIP's option). If formats other than ASCII are available for downloading or uploading specific data elements, these formats shall be indicated in the Data Element Dictionary for those data elements.

d. File Download Header Records:

Every download file for an OASIS Template shall start with the following header records in the indicated order.

REQUEST_STATUS=*nnn*↵
TIME_STAMP=*nnnnnnnnnnnnnnaa*↵
VERSION=*nn.n*↵
TEMPLATE=*nnnnnnnnnnnnnn*↵
OUTPUT_FORMAT=*nnnnnnnnnnnnnn*↵

PRIMARY_PROVIDER=*aaaaaaaaaaaaaaaaaaaaaaaa*↵
PRIMARY_PROVIDER_DUNS=*nnnnnnnnn*↵
DATA_ROWS=*nnn*↵
COLUMN_HEADERS=*aaaa.....aaaaaa*↵

The DATA_ROWS record contains the number of data records following the COLUMN_HEADERS. The COLUMN_HEADERS record contains the template element name for each field that is required in the Template, in the exact order as listed in the Template. Each element name is enclosed in double quotes (") and separated by a comma, (,), see examples in section 4.4.

The Template information then follows as records which correspond one-to-one with the column headings.

4.3 TEMPLATE DESCRIPTIONS

The following OASIS Templates are required as a minimum. The definitions of the data elements are listed in the Data Element Dictionary in Appendix A.

TSIPs must provide a more detailed supplemental definition of the list of Sellers, Paths, Point of Receipt (POR), Point of Delivery (POD), Capacity Types, Ancillary Service Types and Templates on-line, clarifying how the terms are being used (see LIST template). If POR and POD are not used, then Path Name must include directionality.

Many of the Templates represent query-response interactions between the User and the OASIS Node. These interactions are indicated by the "Query" and "Response" section respectively of each template. Some, as noted in their descriptions, are Input information, sent from the User to the OASIS Node.

4.3.1 Template Summary

The following table provides a summary of the process areas, and templates to be used by Users to query information that will be downloaded or to upload information to the Primary Providers. These processes define the minimum set of functions that must be supported by an OASIS Node.

Process Area	Process Name	Template(s)
4.3.2 Query/Response of Posted Services Being Offered	Query/Response Hourly Transmission Capacity Offerings	houroffering

	Query/Response Daily Transmission Capacity Offerings	dayoffering
	Query/Response Monthly Transmission Capacity Offerings	monthoffering
	Query/Response Yearly Transmission Capacity Offerings	yearoffering
	Query/Response Ancillary Service Offerings	ancoffering
4.3.3 Query/Response of Services Information	Query/Response Transmission Services	transserv
4.3.4 Query/Response of Schedules and Curtailments	Query/Response Transmission Schedules	schedule
	Query/Response Curtailments	curtail
4.3.5 Query/Response of Lists of Information	Query/Response List of Sellers, Paths, PORs, PODs, Capacity Types, Ancillary Service Types, Templates	list
4.3.6 Query/Response of Audit Log	Query/Response Audit Log	auditlog
4.3.7 Purchase Transmission Services	Request Purchase of Transmission Services (Input)	transrequest
	Query/Response Status of Transmission Service Request	transstatus
	Seller Approves Purchase (Input)	transsell
	Customer Confirm/Withdraw Purchase of Transmission Service (Input)	transcust
4.3.8 Seller Posting of Transmission Service	Seller Post Transmission Service for Sale (Input)	transpost
	Seller Modify (Remove) Transmission Service for Sale (Input)	transupdate
	Seller Reassign Rights (Input)	transassign
4.3.9 Purchase of Ancillary Service	Request Purchase of Ancillary Service (Input)	ancrequest

	Query/Response Status of Ancillary Service Request	ancstatus
	Seller Approves Purchase of Ancillary Service (Input)	ancsell
	Customer Accept/Withdraw Purchase of Ancillary Service (Input)	anccust
4.3.10 Seller Post Ancillary Service	Seller Post Ancillary Service (Input)	ancpost
	Seller Modify (Remove) Ancillary Service for Sale (Input)	ancupdate
4.3.11 Informal Messages	Post Want Ads (Input)	messagepost
	Query/Response Want Ads	message
	Delete Want Ad (Input)	messagedelete
	Query/Response Standards of Conduct and Personnel Transfers	stdconduct

4.3.2 Query/Response of Posted Services Being Offered

The following five Templates define the minimum information to be posted on services offered for sale. The first four Templates are for transmission services; hourly, daily, monthly and yearly. At a minimum the hourly, daily, monthly and yearly capacity templates must include, for each posted path, the Primary Provider's TTC, firm ATC and non-firm ATC, if provided in the tariff. Additional services may be offered for weekly or seasonal services, at the option of the Primary Provider by adding similar templates. In addition to serving as offers to provide services, the first four Templates also indicate Available Transfer Capability.

a. **Hourly Transmission Capacity Offerings Available for Purchase** (houroffering) is used to provide hourly transmission services that are posted for sale. A User may query information about hourly services available from all sellers.
Template: **houroffering**

1. **Query**

The Query must include the first five fields, shown in Section 4.2.4.1, and any combination of the remaining Query Variables, shown below. BEGTIME and ENDTIME can be used to set a time window of services.
BEGTIME_OF_LAST_UPDATE can be used to specify all services updated since a specific point in time. RETURN_TZ allows a User to set the time zone of the response data.

PATH_NAME (or PATH, PATH1 & PATH2, etc)
SELLER (or SELLER1 & SELLER2, etc)
SELLER_DUNS (or SELDUNS1 & SELDUNS2, etc)
POINT_OF_RECEIPT (or POR, POR1 & POR2, etc)
POINT_OF_DELIVERY (or POD, POD1 & POD2, etc)
CAPACITY_TYPE (or CAPTYPE1 & CAPTYPE2, etc)
BEGTIME (Valid only to the hour)
ENDTIME (Valid only to the hour)
BEGTIME_OF_LAST_UPDATE (only if TIME_OF_LAST_UPDATE is posted by record)
RETURN_TZ

2. **Response**

The response is one or more records showing the requested hourly service information. Note that the Customer will receive as a series of records spanning all the SELLERs, PATH_NAMEs, PORs, PODs, CAPACITY_TYPEs and the HOURs specified in the query. The SALE_REF is a value provided by the SELLER to identify the transmission service product he is selling. All other Template elements are as defined in the Data Element Dictionary.

TIME_OF_LAST_UPDATE
SELLER
SELLER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
INTERFACE_TYPE
DATE_HOUR
CAPACITY
CAPACITY_TYPE
SALE_REF
PRICE (Price at which service is being offered)
PRICE_UNITS
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
SELLER_COMMENTS (Explain discounts and other items here)

b. **Daily Transmission Capacity Offerings Available for Purchase** (dayoffering) is used to provide the daily transmission services that are available for sale. This

Template is identical to the houroffering Template, except the services are offered on a daily basis.

Template: **dayoffering**

1. **Query**

PATH_NAME	(or PATH, PATH1 & PATH2, etc)
SELLER	(or SELLER1 & SELLER2, etc)
SELLER_DUNS	(or SELDUNS1 & SELDUNS2, etc)
POINT_OF_RECEIPT	(or POR, POR1 & POR2, etc)
POINT_OF_DELIVERY	(or POD, POD1 & POD2, etc)
CAPACITY_TYPE	(or CAPTYPE1 & CAPTYPE2, etc)
BEGTIME	(Valid to the day)
ENDTIME	(Valid to the day)
BEGTIME_OF_LAST_UPDATE	(only if TIME_OF_LAST_UPDATE is posted by record)
RETURN_TZ	

2. **Response**

TIME_OF_LAST_UPDATE	
SELLER	
SELLER_DUNS	
PATH_NAME	
POINT_OF_RECEIPT	
POINT_OF_DELIVERY	
INTERFACE_TYPE	
DATE	
CAPACITY	
CAPACITY_TYPE	
SALE_REF	
PRICE	
PRICE_UNITS	
SELLER_NAME	
SELLER_PHONE	
SELLER_FAX	
SELLER_E-MAIL	
SELLER_COMMENTS	(Explain discounts and other terms here)

c. **Monthly Transmission Capacity Offerings Available for Purchase** (monthoffering) is used to provide the monthly transmission services that are available for sale. This Template is identical to the houroffering Template, except the services are offered on a monthly basis.

Template: **monthoffering**

1. **Query**

PATH_NAME	(or PATH, PATH1 & PATH2, etc)
SELLER	(or SELLER1 & SELLER2, etc)
SELLER_DUNS	(or SELDUNS1 & SELDUNS2, etc)
POINT_OF_RECEIPT	(or POR, POR1 & POR2, etc)
POINT_OF_DELIVERY	(or POD, POD1 & POD2, etc)
CAPACITY_TYPE	(or CAPTYPE1 & CAPTYPE2, etc)
BEGTIME	(Valid to the day, only month used)
ENDTIME	(Valid to the day, only month used)
BEGTIME_OF_LAST_UPDATE	
RETURN_TZ	

2. **Response**

TIME_OF_LAST_UPDATE
SELLER
SELLER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
INTERFACE_TYPE
MONTH
CAPACITY
CAPACITY_TYPE
SALE_REF
PRICE
PRICE_UNITS
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
SELLER_COMMENTS (Explain discounts and other terms here)

d. **Yearly Transmission Capacity Offerings Available for Purchase** (yearoffering) is used to provide the yearly transmission services that are available for sale. This Template is identical to the houroffering Template, except the services are offered on a yearly basis. This Template would be used in a case that yearly or seasonal studies had been completed for future years and is optional otherwise.

Template: **yearoffering**

1. **Query**

PATH_NAME	(or PATH, PATH1 & PATH2, etc)
SELLER	(or SELLER1 & SELLER2, etc)
SELLER_DUNS	(or SELDUNS1 & SELDUNS2, etc)
POINT_OF_RECEIPT	(or POR, POR1 & POR2, etc)
POINT_OF_DELIVERY	(or POD, POD1 & POD2, etc)
CAPACITY_TYPE	(or CAPTYPE1 & CAPTYPE2, etc)
BEGTIME	(Valid to the day, only month used)
ENDTIME	(Valid to the day, only month used)
BEGTIME_OF_LAST_UPDATE	
RETURN_TZ	

2. **Response**

TIME_OF_LAST_UPDATE	
SELLER	
SELLER_DUNS	
PATH_NAME	
POINT_OF_RECEIPT	
POINT_OF_DELIVERY	
INTERFACE_TYPE	
MONTH	
CAPACITY	
CAPACITY_TYPE	
SALE_REF	
PRICE	
PRICE_UNITS	
SELLER_NAME	
SELLER_PHONE	
SELLER_FAX	
SELLER_E-MAIL	
SELLER_COMMENTS	(Explain discounts and other terms here)

e. **Ancillary Services Available for Purchase** (ancoffering) is used to provide information regarding the ancillary services that are available for sale by all sellers (both Primary Provider and Third Party Sellers).

In the Query, the first five header fields, shown in Section 4.2.4.1, are required and the others, shown below, may be used to specify the scope of the information to be requested.

Template: **ancoffering**

1. **Query**

SELLER (or SELLER1 & SELLER2, etc)
SELLER_DUNS (or SELDUNS1 & SELDUNS2, etc)
CONTROL_AREA
ANCILLARY_SERVICE_TYPE (or ANCTYPE1 & ANCTYPE2, etc)
BEGTIME (Valid to the hour)
ENDTIME (Valid to the hour)
BEGTIME_OF_LAST_UPDATE
RETURN_TZ

2. **Response**

TIME_OF_LAST_UPDATE
SELLER
SELLER_DUNS
CONTROL_AREA
ANCILLARY_SERVICE_TYPE
SERVICE_DESCRIPTION
BEGDATE_HOUR
ENDDATE_HOUR
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
PRICE
PRICE_UNITS
SALE_REF
SELLER_COMMENTS (Explain discounts and other terms here)

4.3.3 Query/Response of Services Information

a. **Transmission Services** (transserv) is used to provide additional information regarding the transmission services CAPACITY_TYPEs that are available for sale by a Provider in the Templates in Section 4.3.2. This Template is used to summarize tariff information for the convenience of the User. Use of this Template is optional.

Template: **transserv**

1. **Query**

CAPACITY_TYPE (or CAPTYPE1 & CAPTYPE2)
BEGTIME_OF_LAST_UPDATE

2. **Response**

TIME_OF_LAST_UPDATE
CAPACITY_TYPE
SERVICE_DESCRIPTION
TARIFF

4.3.4 Query/Response of Schedules and Curtailments

a. **Hourly Schedule** (schedule) is used to show what a Provider's scheduled transmission capacity usage actually was for specific Paths. All the information provided is derived from that in the transmission reservation (see Template transstatus), except CAPACITY_SCHEDULED, which is the amount of the reservation which was scheduled. Posting of the schedules is organized around the transmission reservations, not the energy schedules. This may require the Primary Provider to map schedules back to the reservation. These records would have to be created for all reservations/schedules done off the OASIS during the operations scheduling period.

Template: **schedule**

1. **Query**

PATH_NAME	(or PATH, PATH1 & PATH2, etc)
SELLER	(or SELLER1 & SELLER2, etc)
SELLER_DUNS	(or SELDUNS1 & SELDUNS2, etc)
CUSTOMER	
CUSTOMER_DUNS	
POINT_OF_RECEIPT	(or POR, POR1 & POR2, etc)
POINT_OF_DELIVERY	(or POD, POD1 & POD2, etc)
CAPACITY_TYPE	(or CAPTYPE1 & CAPTYPE2, etc)
BEGTIME	
ENDTIME	
BEGTIME_OF_LAST_UPDATE	
ASSIGNMENT_REF	
RETURN_TZ	

2. **Response**

TIME_OF_LAST_UPDATE
SELLER
SELLER_DUNS
PATH_NAME
POINT_OF_RECEIPT

POINT_OF_DELIVERY
INTERFACE_TYPE
SOURCE
SINK
CUSTOMER
CUSTOMER_DUNS
DATE_HOUR
CAPACITY (reserved)
CAPACITY_SCHEDULED
CAPACITY_TYPE
PRICE
PRICE_UNITS
ASSIGNMENT_REF (Last rights holder)

b. **Curtailment/Interruption** (curtail) provides additional information about the actual curtailment of transmission reservations that have been scheduled for energy exchange. All fields are derived from the reservation except the CAPACITY_CURTAILED, CURTAILMENT_REASON and CURTAILMENT_OPTIONS. These fields provide information on the reasons for the curtailment, procedures to be followed and options for the Customer, if any, to relieve the curtailment.

Template: **curtail**

1. **Query**

PATH_NAME (or PATH, PATH1 & PATH2, etc)
SELLER (or SELLER1 & SELLER2, etc)
SELLER_DUNS (or SELDUNS1 & SELDUNS2, etc)
CUSTOMER
CUSTOMER_DUNS
POINT_OF_RECEIPT (or POR, POR1 & POR2, etc)
POINT_OF_DELIVERY (or POD, POD1 & POD2, etc)
CAPACITY_TYPE (or CAPTYPE1 & CAPTYPE2, etc)
BEGTIME
ENDTIME
BEGTIME_OF_LAST_UPDATE
ASSIGNMENT_REF
RETURN_TZ

2. **Response**

TIME_OF_LAST_UPDATE
SELLER

SELLER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
CUSTOMER
CUSTOMER_DUNS
BEGTIME (Begin time of curtailment)
ENDTIME (End time of curtailment)
CAPACITY (reserved)
CAPACITY_SCHEDULED
CAPACITY_CURTAILED
CAPACITY_TYPE
CURTAILMENT_REASON
CURTAILMENT_PROCEDURES
CURTAILMENT_OPTIONS
ASSIGNMENT_REF

4.3.5 Query/Response of Lists of Information

a. **List** (list) is used to provide lists of valid names of SELLERs, PATHs, PORs, PODs, CAPACITY_TYPEs, ANCILLARY_SERVICE_TYPEs and TEMPLATEs. These names may be used to query information, post or request services.

Template: **list**

1. **Query**

LIST_NAME (=List of SELLERs, List of PATHs, List of PORs, List of PODs, List of CAPACITY_TYPEs, List of ANCILLARY SERVICE_TYPEs, TEMPLATEs)
BEGTIME_OF_LAST_UPDATE

2. **Response**

TIME_OF_LAST_UPDATE
LIST_NAME
LIST_ITEM
LIST_ITEM_DESCRIPTION

4.3.6 Query/Response to obtain the Audit log

a. **Audit Log Information** (auditlog) is used to provide a means of accessing the required audit information. The TSIP will maintain two types of logs:

1) Log of all changes to posted TS Information, such as CAPACITY. This log will record as a minimum the time of the change, the Template name, the name of the Template data element changed and the old and new values of the Template data element.

2) A complete record of all transaction events, such as those contained in the Templates 4.3.8, 4.3.9 and 4.3.10. For transaction event logs, the response will include: TIME_STAMP, TEMPLATE, ELEMENT_NAME, AND NEW_DATA. In this case the value of OLD_DATA in not applicable.

Template: **auditlog**

1. **Query**

BEGTIME (search against audit log)
ENDTIME (search against audit log)
RETURN_TZ

2. **Response**

ASSIGNMENT_REF or POSTING_REF
TIME_STAMP
TEMPLATE
ELEMENT_NAME (for data elements whose values have changed)
OLD_DATA
NEW_DATA

4.3.7 Purchase Transmission Services

The following Templates shall be used by Customers and Sellers to transact purchases of services.

- The Template (transrequest) shall be used by a customer to enter a request for specific transmission services from a specific Seller.

- The Template (transstatus) shall be used by both Customers and Sellers to monitor the status of their transactions in progress. This Template shall also be used by any Users to review the status of specified transactions. In this case, the identity of the Customers in the transactions which have not been completed shall not be shown. Negotiation of the transactions may take place outside of the OASIS.

- The Template (transsell) shall be used by a Reseller to formally enter the approval or disapproval of a transaction and indicate which rights are to be reassigned. A Primary Provider may, but is not required, to enter transaction approval or disapproval using this Template.

- The Customer shall use the transstatus Template to view the Seller's decision.

- After receiving notification of the transaction being approved by the Seller, the Template (transcust) shall be used by the Customer to formally enter the confirmation or withdrawal of the offer to purchase services.

- The Reseller shall use the transstatus Template to view the Customer's decision.

- For deals consummated off the OASIS, after the Customer has accepted the offering, the Template (transassign) may be used by the Reseller to notify the Primary Provider of the transfer of rights to the Customer.

The TSIP shall assign a unique reference identifier for each Customer request to purchase capacity or services. This identifier will be used to track the request through various stages. This ASSIGNMENT_REF is kept with the service through out its life. Whenever the service is resold, a new ASSIGNMENT_REF number is assigned, but previous ASSIGNMENT_REF numbers are also kept so that a chain of all transactions related to the service can be maintained.

Sellers may aggregate portions of several previous purchases to create a new service, if this capability is provided by the Transmission Services Information Provider. Sellers, including Transmission Providers, can aggregate their posting by using a unique number, SALE_REF.

Customers can track their purchases through unique values that they provide, DEAL_REF and REQUEST_REF.

a. **Customer Capacity Purchase Request** (Input) (transrequest) is used by the Customer to request the purchase of transmission services. The response simply acknowledges that the Customer's request was received by the OASIS Node. It does not imply that the Seller has received the request.

When the request is received at the OASIS Node, the TSIP assigns a unique value to the ASSIGNMENT_REF, which will be used to track all transactions related to this specific transmission service being requested.

Specification of a value YES in the PRECONFIRMED field authorizes the TSIP to automatically change the STATUS field in the transstatus template to CONFIRMED when that request is ACCEPTED by the Seller.

Template: **transrequest**

1. **Input** (Upload template)

SELLER (Primary or Reseller)
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
SOURCE
SINK
CAPACITY
CAPACITY_TYPE
SALE_REF
BEGTIME (Valid only hour)
ENDTIME (Valid only hour)
PRICE
PRICE_UNITS
PRECONFIRMED
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
REQUEST_REF
DEAL_REF
CUSTOMER_COMMENTS

2. **Response** (acknowledgement)

ASSIGNMENT_REF (assigned by TSIP)
SELLER
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
SOURCE
SINK
CAPACITY
CAPACITY_TYPE
SALE_REF

BEGTIME
ENDTIME
PRICE
PRICE_UNITS
PRECONFIRMED
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
REQUEST_REF
DEAL_REF
CUSTOMER_COMMENTS

b. **Status of Customer Purchase Request** (transstatus) is provided upon the request of a Customer or a Provider to indicate the current status of one or more transactions.

When a Customer requests this Template with his own name indicated, all active purchase requests for that Customer are provided. Only the authorized Customer is permitted to view this information in this manner. All others will have the customer identification blocked for the first 30 days.

When a Seller requests this Template with his own name indicated, all active requests for purchasing services from that Seller are retrieved.

Other fields, such as SOURCE and SINK, may be masked to comply with FERC regulations and Primary Provider tariff.

If neither a specific Customer's name nor a specific Seller's name is indicated, then the status of all transactions for the requested Path(s) are shown, but with the Customers' names not provided for any uncompleted transactions.

QUEUED =	initial status assigned by TSIP on receipt of "customer capacity purchase request"
RECEIVED=	reassigned by TP to acknowledge QUEUED requests and indicate the service request is being evaluated
STUDY=	assigned by TP to indicate some level of study is required or being performed to evaluate service request
ACCEPTED=	assigned by TP to indicate service request has been approved/accepted
REFUSED=	assigned by TP to indicate service request has been denied, SELLER_COMMENTS should be used to communicate reason for denial of service

CONFIRMED=	assigned by TC in response to TP posting "ACCEPTED" status, to confirm service. Once a request has been "CONFIRMED", a transmission service reservation exits
WITHDRAWN=	assigned by TC at any point in request evaluation to withdraw the request from any further action
DISPLACED=	assigned by TP when a "CONFIRMED" request from a TC is displaced by a longer term request and the TC has exercised right of first refusal (ie. refused to match terms of new request)

Template: **transstatus**

1. **Query**

SELLER	(or SELLER1 & SELLER2, etc)
SELLER_DUNS	(or SELDUNS1 & SELDUNS2, etc)
CUSTOMER	
CUSTOMER_DUNS	
PATH_NAME	(or PATH, PATH1 & PATH2, etc)
POINT_OF_RECEIPT	(or POR, POR1 & POR2, etc)
POINT_OF_DELIVERY	(or POD, POD1 & POD2, etc)
CAPACITY_TYPE	(or CAPTYPE, CAPTYPE1 & CAPTYPE2, etc)
ASSIGNMENT_REF	
REASSIGNED_REF	
SALE_REF	
REQUEST_REF	
DEAL_REF	
STATUS	
BEGTIME	(Beginning time of service)
ENDTIME	
BEGDATE_SEC_QUEUED	(Beginning time queue)
ENDDATE_SEC_QUEUED	
BEGTIME_OF_LAST_UPDATE	
RETURN_TZ	

2. **Response**

TIME_OF_LAST_UPDATE
ASSIGNMENT_REF
SELLER (PRIMARY or RESELLER)
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
PATH_NAME

POINT_OF_RECEIPT
POINT_OF_DELIVERY
SOURCE
SINK
CAPACITY (total reservation)
CAPACITY_TYPE
BEGDATE_HOUR
ENDDATE_HOUR
PRICE
PRICE_UNITS
PRECONFIRMED
SALE_REF
REQUEST_REF
DEAL_REF
STATUS= **RECEIVED, QUEUED, STUDY, ACCEPTED, REFUSED, CONFIRMED, WITHDRAWN, DISPLACED**
STATUS_COMMENTS
DATE_SEC_QUEUED
PRIMARY_PROVIDER_COMMENTS
SELLER_COMMENTS
CUSTOMER_COMMENTS
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
REASSIGNED_REF
REASSIGNED_CAPACITY (Capacity from each previous transaction)
REASSIGNED_BEGDATE_HOUR
REASSIGNED_ENDDATE_HOUR

c. **Seller Approval of Purchase (Input-Template Upload)** (transsell) is input by a Seller to modify the status and queue of a request by a Customer. Note there is no response template required, since the seller can view the transstatus template. If preconfirmed then seller can only change values of data elements, STATUS, STATUS_COMMENTS, SELLER_COMMENTS, REASSIGNED_REF,REASSIGNED_BEGDATE_HOUR and REASSIGNED_ENDDATE_HOUR.

Template: **transsell**

1. **Input** (Template Upload)

SELLER (Primary or Reseller)
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
SOURCE
SINK
CAPACITY (Total reservation acknowledged)
CAPACITY_TYPE
ASSIGNMENT_REF (Required)
BEGTIME (Valid only to hour)
ENDTIME (Valid only to hour)
SALE_REF
REQUEST_REF
DEAL_REF
PRICE
PRICE_UNITS
STATUS= **Received, Study, Accepted, Refused**
STATUS_COMMENTS
SELLER_COMMENTS
REASSIGNED_REF
REASSIGNED_CAPACITY (Previous capacity to be reassigned)
REASSIGNED_BEGDATE_HOUR
REASSIGNED_ENDDATE_HOUR

d. Customer Confirmation of Purchase (Input) (transcust) is input by the Customer to state his agreement or withdrawal of a purchase after the Seller has indicated that the purchase request is approved. Only the STATUS, STATUS_COMMENTS and CUSTOMER_COMMENTS data elements can be modified in this template.

Template: **transcust**

1. **Input (Upload Template)**

SELLER (Primary or Reseller)
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
PATH_NAME
POINT_OF_RECEIPT

POINT_OF_DELIVERY
SOURCE
SINK
CAPACITY
CAPACITY_TYPE
ASSIGNMENT_REF (Required)
BEGTIME (Valid only to hour)
ENDTIME (Valid only to hour)
REQUEST_REF
SALE_REF
DEAL_REF
PRICE
PRICE_UNITS
STATUS= **Confirmed, Withdrawn**
STATUS_COMMENTS
CUSTOMER_COMMENTS

4.3.8 Seller Posting of Transmission Services

Sellers shall use the following templates for providing sell information. They may aggregate portions of several previous purchases to create a new service, if this capability is provided by the Transmission Services Information Provider:

a. **Seller Capacity Posting (Input)** (transpost) shall be used by the Seller to post the transmission capacity for resale on to the OASIS Node.

Template: **transpost**

1. **Input**

SELLER
SELLER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
INTERFACE_TYPE
BEGTIME (Valid only to hour)
ENDTIME (Valid only to hour)
CAPACITY (Total being posted)
CAPACITY_TYPE
SELLER_COMMENTS
SELLER_NAME
SELLER_PHONE
SELLER_FAX

SELLER_E-MAIL
SALE_REF
PRICE
PRICE_UNITS

2. **Response (Acknowledgement)**

POSTING_REF (Assigned by TSIP)
SELLER
SELLER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
INTERFACE_TYPE
BEGTIME
ENDTIME
CAPACITY (Total being posted)
CAPACITY_TYPE
SELLER_COMMENTS
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
SALE_REF
PRICE
PRICE_UNITS

b. Seller Capacity Modify (Input) (transupdate) shall be used by a Seller to modify a posting of transmission capacity.

Template: **transupdate**

1. **Input** (Template Upload)

SELLER	
SELLER_DUNS	
PATH_NAME	
POINT_OF_RECEIPT	(only if modified)
POINT_OF_DELIVERY	(only if modified)
INTERFACE_TYPE	(only if modified)
POSTING_REF	(Must be provided)
BEGTIME	(only if modified)
ENDTIME	(only if modified)
CAPACITY	(only if modified)

CAPACITY_TYPE	(only if modified)
SELLER_COMMENTS	(only if modified)
SELLER_NAME	(only if modified)
SELLER_PHONE	(only if modified)
SELLER_FAX	(only if modified)
SELLER_E-MAIL	(only if modified)
SALE_REF	
PRICE	(only if modified)
PRICE_UNITS	(only if modified)

2. **Response** (acknowledgement)

SELLER
SELLER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
INTERFACE_TYPE
POSTING_REF
BEGTIME
ENDTIME
CAPACITY
CAPACITY_TYPE
SELLER_COMMENTS
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
SALE_REF
PRICE
PRICE_UNITS

c. **Seller to Reassign Service Rights to Another Customer (Input)** (transassign) is used by the seller to ask the Transmission Services Information Provider to reassign some or all of the seller's rights to Services to another Customer, for seller confirmed transactions that have occurred off the OASIS. The TSIP shall assign a unique ASSIGNMENT_REF in the response (acknowledgement) and enter the status CONFIRMED as viewed in the transstatus template.

Template: **transassign**

1. **Input (Upload Template)**

SELLER (Primary or Reseller)

SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
SOURCE
SINK
CAPACITY
CAPACITY_TYPE
BEGTIME (Valid only to hour)
ENDTIME (Valid only to hour)
PRICE
PRICE_UNITS
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
DATE_SEC_QUEUED
SALE_REF
REASSIGNED_REF
REASSIGNED_CAPACITY (Capacity being sold from each previous assignment)
REASSIGNED_BEGDATE_HOUR
REASSIGNED_ENDDATE_HOUR
SELLER_COMMENTS

2. **Response (acknowledgement)**

ASSIGNMENT_REF (assigned by information provider)
SELLER (Primary or Reseller)
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
PATH_NAME
POINT_OF_RECEIPT
POINT_OF_DELIVERY
SOURCE
SINK
CAPACITY (Total capacity being reassigned)
CAPACITY_TYPE
BEGTIME
ENDTIME
PRICE

PRICE_UNITS
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
DATE_SEC_QUEUED
SALE_REF
REASSIGNED_REF
REASSIGNED_CAPACITY (Capacity being sold from each previous assignment)
REASSIGNED_BEGDATE_HOUR
REASSIGNED_ENDDATE_HOUR
SELLER_COMMENTS

4.3.9 Purchase of Ancillary Services

a. **Customer Requests to Purchase Ancillary Services** (ancrequest) (Input, Template Upload) is used by the customer to purchase ancillary services that have been posted by a seller of those services.

1. **Input (Template Upload)**

Template: **ancrequest**

SELLER (or SELLER1 & SELLER2, etc)
SELLER_DUNS (or SELDUNS1 & SELDUNS2, etc)
CUSTOMER
CUSTOMER_DUNS
CONTROL_AREA
ANCILLARY_SERVICE_TYPE
SERVICE_DESCRIPTION
BEGTIME (Valid to the hour)
ENDTIME (Valid to the hour)
PRICE
PRICE_UNITS
PRECONFIRMED
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
CUSTOMER_COMMENTS
SALE_REF
DEAL_REF
REQUEST_REF

2. **Response** (acknowledgement)

ASSIGNMENT_REF (assigned by TSIP)
SELLER
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
CONTROL_AREA
ANCILLARY_SERVICE_TYPE
SERVICE_DESCRIPTION
BEGTIME (Valid to the hour)
ENDTIME (Valid to the hour)
PRICE
PRICE_UNITS
PRECONFIRMED
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
CUSTOMER_COMMENTS
SALE_REF
DEAL_REF
REQUEST_REF

b. **Ancillary Services Status** (ancstatus) is used to provide the status of purchase requests regarding the ancillary services that are available for sale by all Service Providers.

Template: **ancstatus**

1. **Query**

SELLER (or SELLER1 & SELLER2, etc)
SELLER_DUNS (or SELDUNS1 & SELDUNS2, etc)
CUSTOMER
CUSTOMER_DUNS
CONTROL_AREA
ANCILLARY_SERVICE_TYPE
BEGTIME (Valid to the hour)
ENDTIME (Valid to the hour)
BEGDATE_SEC_QUEUED
ENDDATE_SEC_QUEUED
BEGTIME_OF_LAST_UPDATE (only if TIME_OF_LAST_UPDATE is posted by record)

ASSIGNMENT_REF
REASSIGNED_REF
SALE_REF
DEAL_REF
REQUEST_REF
STATUS
RETURN_TZ

2. **Response**

TIME_OF_LAST_UPDATE
SELLER
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
CONTROL_AREA
ANCILLARY_SERVICE_TYPE
SERVICE_DESCRIPTION
BEGDATE_HOUR
ENDDATE_HOUR
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
PRICE
PRICE_UNITS
PRECONFIRMED
STATUS= **QUEUED, RECEIVED, ACCEPTED, REFUSED, CONFIRMED, WITHDRAWN**
STATUS_COMMENTS
SELLER_COMMENTS
DATE_SEC_QUEUED
CUSTOMER_COMMENTS
PRIMARY_PROVIDER_COMMENTS
ASSIGNMENT_REF
REASSIGNED_REF
SALE_REF
DEAL_REF
REQUEST_REF

c. **Seller Approves Ancillary Service** (ancsell) (Input, Template Upload) is used by the seller to confirm acceptance after the seller has approved the purchase of ancillary service. Note there is no response for this Input, since the Seller can query the ancstatus Template.

Template: **ancsell**

1. **Input (Template Upload)**

SELLER
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
CONTROL_AREA
ANCILLARY_SERVICE_TYPE
SERVICE_DESCRIPTION
BEGTIME (Valid to the hour)
ENDTIME (Valid to the hour)
PRICE
PRICE_UNITS
STATUS= **Received, Accepted, Refused**
STATUS_COMMENTS
SELLER_COMMENTS
ASSIGNMENT_REF (Required)
REASSIGNED_REF
SALE_REF
DEAL_REF
REQUEST_REF

d. **Customer accepts Ancillary Service** (anccust) (Input, Template Upload) is used by the customer to confirm acceptance after the seller has approved the purchase of ancillary service. Note there is no response for this Input, since the Customer can query the ancstatus Template.

Template: **anccust**

1. **Input (Template Upload)**

SELLER
SELLER_DUNS
CUSTOMER
CUSTOMER_DUNS
CONTROL_AREA
ANCILLARY_SERVICE_TYPE

SERVICE_DESCRIPTION
BEGTIME (Valid to the hour)
ENDTIME (Valid to the hour)
PRICE
PRICE_UNITS
STATUS= **Confirmed, Withdrawn**
STATUS_COMMENTS
CUSTOMER_COMMENTS
ASSIGNMENT_REF (required)
SALE_REF
DEAL_REF
REQUEST_REF

4.3.10 Seller Post Ancillary Services

a. **Seller Ancillary Services Posting** (ancpost) (Input, Template Upload) is used by the seller to post information regarding the different services that are available for sale by third party sellers of ancillary services.

Template: **ancpost**

1. **Input (Template Upload)**

SELLER
SELLER_DUNS
CONTROL_AREA
ANCILLARY_SERVICE_TYPE
SERVICE_DESCRIPTION
BEGTIME (Valid to the hour)
ENDTIME (Valid to the hour)
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
PRICE
PRICE_UNITS
SELLER_COMMENTS
SALE_REF

2. **Response (acknowledgement)**

POSTING_REF (Assigned by TSIP)
SELLER
SELLER_DUNS

CONTROL_AREA
ANCILLARY_SERVICE_TYPE
SERVICE_DESCRIPTION
BEGTIME
ENDTIME
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
PRICE
PRICE_UNITS
SELLER_COMMENTS
SALE_REF

b. **Seller Modify Ancillary Services Posting** (ancupdate) (Input, Template Upload) is used by the seller to modify posted information regarding ancillary services that are available for sale by a third party seller. To remove an offering the BEGTIME=0 and the ENDTIME=0.

Template: **ancupdate**

1. **Input (Template Upload)**

SELLER
SELLER_DUNS
CONTROL_AREA
ANCILLARY_SERVICE_TYPE
SERVICE_DESCRIPTION
BEGTIME (Valid for the hour)
ENDTIME (Valid for the hour)
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
PRICE
PRICE_UNITS
SELLER_COMMENTS
POSTING_REF (Required)
SALE_REF

2. **Response (acknowledgement)**

SELLER
SELLER_DUNS

CONTROL_AREA
ANCILLARY_SERVICE_TYPE
SERVICE_DESCRIPTION
BEGTIME
ENDTIME
SELLER_NAME
SELLER_PHONE
SELLER_FAX
SELLER_E-MAIL
PRICE
PRICE_UNITS
SELLER_COMMENTS
POSTING_REF
SALE_REF

4.3.11 Informal Messages

a. Provider/Customer Want Ads and Informal Message Posting Request (Input) (messagepost) is used by Providers and Customers who wish to post a message.

Template: **messagepost**

1. **Input** (template upload)

CUSTOMER
CUSTOMER_DUNS
CUSTOMER_NAME must be specified
CUSTOMER_PHONE must be specified (if FAX or E-MAIL is blank)
CUSTOMER_FAX must be specified (if PHONE or E-MAIL is blank)
CUSTOMER_E-MAIL must be specified (if PHONE or FAX is blank)
MESSAGE must be specified
DATE_SEC_POSTED
DATE_SEC_EXPIRES

2. **Response** (acknowledgement)

POSTING_REF (assigned by information provider)
CUSTOMER
CUSTOMER_DUNS
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
MESSAGE

DATE_SEC_POSTED
DATE_SEC_EXPIRES

b. **Message** (message) is used to view a posted Want Ad or Informal Message.

Template: **message**

1. **Query**

CUSTOMER
CUSTOMER_DUNS
POSTING_REF
BEGTIME_OF_LAST_POSTING

2. **Response**

TIME_OF_LAST_UPDATE
CUSTOMER
CUSTOMER_DUNS
DATE_SEC_POSTED
DATE_SEC_EXPIRES
CUSTOMER_NAME
CUSTOMER_PHONE
CUSTOMER_FAX
CUSTOMER_E-MAIL
POSTING_REF
MESSAGE

c. **Provider/Sellers Message Delete Request (Input)** (messagedelete) is used by Providers and Sellers who wish to delete their message. The POSTING_REF number is used to determine which message.

Template: **messagedelete**

1. **Input** (Template upload)

CUSTOMER
CUSTOMER_DUNS
DATE_SEC_POSTED
DATE_SEC_EXPIRES
POSTING_REF (required)

d. **Standards of Conduct and Personnel Transfers (stdconduct).**

Template: **stdconduct**

1. **Query**

   BEGTIME_OF_LAST_UPDATE

2. **Response**

   TIME_OF_LAST_UPDATE
   STANDARDS_OR_PERSONNEL_ISSUES

4.4 FILE REQUEST AND FILE DOWNLOAD EXAMPLES

4.4.1 File Example for Hourly Offering

Example of the request to Primary Provider, aaa, and response for Seller, wxyz, for PATH_NAME "W/AAAA/PATH-ABC//" for April 10, 1996 from 8 a.m. to 3 p.m. (Note that the PATH_NAME consists of a REGION_CODE, PRIMARY_PROVIDER_CODE, PATH_CODE, and an OPTIONAL_CODE, separated with a slash, "/".)

The request is in the form of a URL query string and the response is a ASCII delimited file.

1. **Query**

http://(OASIS Node name)/OASIS/aaa/data/houroffering? ver=1.0&templ=houroffering& fmt=data&pprov=aaa &pprovduns=123456789& path=W/AAA/ABC// &seller=WXYZ &selerduns=987654321& POR=aaa& POD=bbb& captype1=hourly-firm &captype2=hourly-non-firm &tz=PD& btime=19960410080000PD& endtime=19960410150000PD

2. **Response Data**

REQUEST-STATUS=200 ↵ (*Successful*)
TIME_STAMP="19960409113526PD" ↵
VERSION=1.0↵
TEMPLATE="houroffering"↵
OUTPUT_FORMAT="DATA" ↵
PRIMARY_PROVIDER=AAA↵
PRIMARY_PROVIDER_DUNS=123456789↵
DATA_ROWS=16↵
COLUMN_HEADERS="TIME_OF_LAST_UPDATE","SELLER",SELLER_DUNS""PATH_NAME"
,"POINT_OF_RECEIPT","POINT_OF_DELIVERY","INTERFACE_TYPE","DATE_HOUR","CAP
ACITY","CAPACITY_TYPE","SALE_REF","PRICE","PRICE_UNITS","SELLER_NAME","SELL
ER_PHONE","SELLER_FAX","SELLER-E-MAIL","SELLER_COMMENTS" ↵
"19960409030000PD","WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996040800PD",300,"HOURLY-
FIRM","N/A","N/A",1.25,"MW","N/A","N/A","N/A","N/A","10% DISCOUNT" ↵

"19960409030000PD","WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996040800PD",300,"HOURLY-NON-FIRM","N/A","N/A",1.25,"MW","N/A","N/A","N/A","N/A","10% DISCOUNT" ↵
"19960409030000PD","WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996040900PD",300,"HOURLY-FIRM","N/A","N/A",1.25,"MW","N/A","N/A","N/A","N/A","10% DISCOUNT" ↵
"19960409030000PD","WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996040900PD",300,"HOURLY-NON-FIRM","N/A","N/A",1.25,"MW","N/A","N/A","N/A","N/A","10% DISCOUNT" ↵
"19960409030000PD","WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996041000PD",300,"HOURLY-FIRM","N/A","N/A",1.25,"MW","N/A","N/A","N/A","N/A","10% DISCOUNT" ↵
"19960409030000PD","WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996041000PD",300,"HOURLY-NON-FIRM","N/A","N/A",1.25,"MW","N/A","N/A","N/A","N/A","10% DISCOUNT" ↵
"19960409030000PD","WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996041100PD",300,"HOURLY-FIRM","N/A","N/A",1.25,"MW","N/A","N/A","N/A","N/A","10% DISCOUNT" ↵
.
.
.
"19960409030000PD","WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996041500PD",300,"HOURLY-FIRM","N/A","N/A",1.25,"MW","N/A","N/A","N/A","N/A","10% DISCOUNT" ↵
"19960409030000PD","WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996041500PD",300,"HOURLY-NON-FIRM","N/A","N/A",1.25,"MW","N/A","N/A","N/A","N/A","10% DISCOUNT" ↵

4.4.2 File Example for Hourly Schedule Data

This example shows a request for the hourly schedule data from Primary Provider, aaa, related to the seller, wxyz, for the period 10 a.m. to 3 p.m. on April 10, 1996.

There are two identical requests examples using two slightly different methods.
The first request is using a HTTP URL request string through a HTML GET method. The second request is a similar example using fetch_http from a file using a POST method.

1. **Query**

URL Request (HTTP method=GET)

http://(OASIS Node name)/OASIS/aaa/data/schedule? ver=1.0& pprov=AAA& templ=schedule& fmt=data &pprovduns=123456789 &path=W/AAA/ABC//& seller=WXYZ &por=BBB &pod=CCC& tz=PD& btime=19960410100000PD& endtime=19960410150000PD

URL Request (HTTP method=POST)

$ fetch_http http://(OASIS Node name)/OASIS/aaa/data/OASISdata -f *c:/OASIS/wxyz/upload/in-file.txt*

Where *in-file.txt* contains the following:
ver=1.0& pprov=AAA& templ=schedule& fmt=data &pprovduns=123456789 &path=W/AAA/ABC//& seller=WXYZ &por=BBB &pod=CCC& tz=PD& btime=19960410010000PD& endtime=19960410150000PD

2. **Response Data**

REQUEST-STATUS=200↵
TIME_STAMP=19960410114702PD↵
VERSION=1.0↵

```
TEMPLATE="schedule"↵
OUTPUT_FORMAT="DATA" ↵
PRIMARY_PROVIDER="AAA"↵
PRIMARY_PROVIDER_DUNS=123456789↵
DATA_ROWS=6↵
COLUMN_HEADERS="TIME_OF_LAST_UPDATE","SELLER",'SELLER_DUNS","PATH_NAME","POINT_OF_RECEIP
T","POINT_OF_DELIVERY","INTERFACE_TYPE","SOURCE","SINK","CUSTOMER","CUSTOMER_DUNS","DATE_HO
UR","CAPACITY","CAPACITY_SCHEDULED","CAPACITY_TYPE","PRICE","PRICE_UNITS","ASSIGNMENT_REF"
↵
"19960409030000pd","wxyz",987654321,"W/AAA/ABC//","BBB","CCC","E","source","sink","WXYZ","0987654321","199
604100800PD",300,300,"HOURLY-FIRM",1.00,"MW",856743↵
        ...↵
        ...↵

"19960409030000pd","wxyz",987654321,"W/AAA/ABC//","BBB","CCC","E","source","sink","WXYZ","0987654321","199
604100140PD",200,200,"HOURLY-FIRM",1.00,"MW",856743↵
"19960409030000pd","wxyz",987654321,"W/AAA/ABC//","BBB","CCC","E","source","sink","WXYZ","0987654321","199
604101500PD",200,200,"HOURLY-FIRM",1.00,"MW",856743↵
```

4.4.3 Customer Posting a Transmission Service Offering

This example shows how a Customer would post for sale a transmission service that was previously purchased. The Seller would create a file and upload the file using the FETCH_HTTP program to send a file to the OASIS node of the Primary Provider.

1. **File post.txt**

```
VERSION=1.0↵
TEMPLATE="transpost"↵
OUTPUT_FORMAT="DATA" ↵
PRIMARY_PROVIDER=AAA↵
PRIMARY_PROVIDER_DUNS=123456789↵
DATA_ROWS=1↵
COLUMN_HEADERS="SELLER",SELLER_DUNS""PATH_NAME","POINT_OF
_RECEIPT","POINT_OF_DELIVERY","INTERFACE_TYPE","BEGTIME","END
TIME","CAPACITY","CAPACITY_TYPE","SELLER_COMMENTS","SELLER_N
AME",SELLER_PHONE",SELLER_FAX",SELLER-E-MAIL","SALE_REF",
"PRICE","PRICE_UNITS" ↵
"WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996040800PD","1996041800PD,150,"HOURLY-
FIRM","N/A/","WXYZ","408-555-1212","415-555-1213","JSMITH@WXYZ.COM","wxyz1234","4567122, .90,"MW/HR" ↵
```

FETCH_HTTP Command to send posting

```
$ fetch_http http:///(OASIS Node name)/OASIS/abcd/data/transrequest -f
c:/OASIS/abcd/upload/post.txt
```

2. **Response Data**

```
REQUEST-STATUS=200 ↵ (Successful)
```

TIME_STAMP="19960409113526PD" ↵
VERSION=1.0↵
TEMPLATE="transpost"↵
OUTPUT_FORMAT="DATA" ↵
PRIMARY_PROVIDER=AAA↵
PRIMARY_PROVIDER_DUNS=123456789↵
DATA_ROWS=1↵
COLUMN_HEADERS="SELLER",SELLER_DUNS""PATH_NAME","POINT_OF_RECEIPT","PO
INT_OF_DELIVERY","INTERFACE_TYPE","BEGTIME","ENDTIME","CAPACITY","CAPACIT
Y_TYPE","SELLER_COMMENTS","SELLER_NAME",SELLER_PHONE",SELLER_FAX",SELLE
R-E-MAIL","SALE_REF", "PRICE"<"PRICE_UNITS" ↵
"WXYZ",987654321,"W/AAA/ABC//","N/A","N/A","E","1996040800PD","1996041800PD,150,"HOURLY-
FIRM","N/A/","WXYZ","408-555-1212","415-555-1213","JSMITH@WXYZ.COM","wxyz1234","4567122, .90,"MW/HR" ↵

4.4.4 Example of Re-aggregating Purchasing Services using Reassignment

The following examples do not show the complete Template information, but only show those elements of the Template of interest to this example.

a. Customer #1, "Best Energy" requests the purchase of 150 MW Firm ATC for 8 a.m. to 5 p.m. for $1.00 from a Primary Provider (transrequest).

TEMPLATE="transrequest"
CUSTOMER="Best Energy"
CAPACITY=150
CAPACITY_TYPE="HOURLY-FIRM"
BEGTIME="1996050708000000PD"
ENDTIME="1996050717000000PD"
PRICE="$1.00"

The Information Provider assigns ASSIGNMENT_REF = 5000 on acknowledgment.

b. Customer #1 purchases 120 MW ATC Non-firm for 3 p.m. to 9 p.m. for $.90 (transrequest). The Information Provider assigns the ASSIGNMENT_REF=5001 when the request for purchase is made and is shown in the acknowledgement.

TEMPLATE="transrequest"
CUSTOMER="Best_Energy"
CAPACITY=120
CAPACITY_TYPE="HOURLY-NON-FIRM"
BEGTIME="1996050715000000PD"
ENDTIME="1996050721000000PD"
PRICE="$1.05"

c. Customer #1 becomes Seller #1 and post the Transmission service of 100 MW ATC Non-firm capacity from 8 a.m. to 9 p.m. for resale at $.90/MW-hour.

TEMPLATE="transpost"
SELLER="Best_Energy"
CAPACITY=100
CAPACITY_TYPE="HOURLY-NON-FIRM"

BEGTIME="1996050708000000PD"
ENDTIME="1996050721000000PD"
SALE_REF="BEST100"
PRICE=.90
PRICE_UNITS=MW-HR
SELLER_COMMENTS="aggregating two previous purchases"

d. Customer #2 then requests purchase of 100 MW Non-firm from Reseller #1 from 8 a.m. to 6 p.m. for $0.90/MW-hour (transrequest).

TEMPLATE="transrequest"
CUSTOMER="Wholesale Power Co."
SELLER="Best_Energy"
CAPACITY=100
CAPACITY_TYPE="NON-FIRM"
BEGTIME="1996050708000000PD"
ENDTIME="1996050721000000PD"
SALE_REF="BEST100"
DEAL_REF="WPC100"
PRICE=.90
PRICE_UNITS=MW-HR
CUSTOMER_COMMENTS="Only need service until 6 p.m."

The Information Provider provides the ASSIGNMENT_REF=5002 for this transaction.

e. Seller informs the Information Provider of the reassignment of the previous transmission rights when the seller accepts the customer purchase request (transsell).

TEMPLATE="transsell"
CUSTOMER="Wholesale Power Co."
SELLER="Best_Energy"
ASSIGNMENT_REF=5002
STATUS="Accepted"
REASSIGNED_REF1=5000
REASSIGNED_CAPACITY1=100
REASSIGNED_BEGDATE_HOUR1="199605070800PD"
REASSIGNED_ENDDATE_HOUR1="199605071700PD"

REASSIGNED_REF2=5001
REASSIGNED_CAPACITY2=100
REASSIGNED_BEGDATE_HOUR2="199605071700PD"
REASSIGNED_ENDDATE_HOUR2="199605071800PD"

4.5 INFORMATION SUPPORTED BY WEB PAGE

There must be a Web page on each OASIS node with information on requesting the text file of the tariffs and service agreements.

5. PERFORMANCE REQUIREMENTS

A critical aspect of any system is its performance. Performance encompasses many issues, such as security, sizing, response to user requests, availability, backup, and other parameters that are critical for the system to function as desired. The following sections cover the performance requirements for the OASIS.

5.1 SECURITY

Breaches of security include many inadvertent or possibly even planned actions. Therefore, several requirements shall be implemented by the TSIPs to avoid these problems:

a. **Provider Update of TS Information:** Only Providers, including Secondary Providers, shall be permitted to update their own TS Information.

b. **Customer Input Only ASCII Text:** TSIPs shall be permitted to require that inputs from Customers shall be filtered to permit only strict ASCII text (strip bit 8 from each byte).

c. **Provider Updating Over Public Facilities:** If public facilities are involved in the connection between a Provider and the OASIS Node, the Provider shall be able to update his TS Information only through the use of ASCII or through encrypted files.

d. **User Registration and Login:** All Users shall be required to register and login to a Provider's Account before accessing that Provider's TS Information.

e. **User Passwords:** All Users shall enter their personal password when they wish access to TS Information beyond the lowest Access Privilege.

f. **Service Request Transactions:** Whenever Service Request transactions are implemented entirely over the OASIS, both an individual Customer password for the

request, and an individual Provider password for the notification of acceptance shall be required.

g. **Data Encryption:** Sophisticated data encryption techniques and the "secure id" mechanisms being used on the public Internet shall be used to transfer sensitive data across the Internet and directly between OASIS Nodes.

h. **Viruses:** TSIPs shall be responsible for protecting the OASIS Nodes from viruses.

i. **Performance Log:** TSIPs shall keep a log on User usage of OASIS resources.

j. **Disconnection:** TSIPs shall be allowed to disconnect any User who is degrading the performance of the OASIS Node through the excessive use of resources, beyond what is permitted in their Service Level Agreement.

k. **Premature Access:** The TSIP log shall also be used to ensure that Users who are affiliated with the Provider's company (or any other User) do not have access to TS information before it is publicly available.

l. **Firewalls:** TSIPs shall employ security measures such as firewalls to minimize the possibility that unauthorized users shall access or modify TS Information or reach into Provider or User systems. Interfaces through Public Data Networks or the Internet shall be permitted as long as these security requirements are met.

m. **Certificates and Public Key Standards (optional):** Use of alternative forms of login and authentication using certificates and public key standards is acceptable.

5.2 ACCESS PRIVILEGES

Users shall be assigned different Access Privileges based on external agreements between the User and the Provider. These Access Privileges are associated with individual Users rather than just a company, to ensure that only authorized Users within a company have the appropriate access.

The following Access Privileges shall be available as a minimum:

a. **Access Privilege Read-Only:** The User may only read publicly available TS Information.

b. **Access Privilege for Transactions:** The Customer is authorized to transact Service Requests.

c. **Access Privilege Read/Write:** A Secondary Provider shall have write access to his own Provider Account on an OASIS Node.

5.3 OASIS RESPONSE TIME REQUIREMENTS

TSIPs can only be responsible for the response capabilities of two portions of the Internet-based OASIS network:

- The response capabilities of the OASIS Node server to process interactions with Users
- The bandwidth of the connection(s) between the OASIS Node server and the Internet.

Therefore, the OASIS response time requirements are as follows:

a. **OASIS Node Server Response Time:** The OASIS Node server shall be capable of supporting its connection(s) to Users with an average aggregate data rate of at least "A" bits per second. "A" is defined as follows:

$$A = N * R \text{ bits/sec}$$

where:

$$N = 5\% \text{ of registered Customers.}$$

and

$$R = 28{,}800 \text{ bits/sec per Customer.}$$

b. **OASIS Node Network Connection Bandwidth:** The bandwidth "B" of the OASIS Node connection(s) to the Internet shall be at least:

$$B = 2 * A \text{ bits/sec}$$

c. **Time to Meet Response Requirements:** The minimum time responses shall be met **within 1 month of User registration** for any single new User. If more than 10 new Users register in one month, 2 months lead time shall be permitted to expand/ upgrade the OASIS Node to meet the response requirements.

5.4 OASIS PROVIDER ACCOUNT AVAILABILITY

The following are the OASIS Provider Account availability requirements:

a. **OASIS Provider Account Availability:** The availability of each OASIS Provider account on an OASIS Node shall be at least **98.0%** (downtime of about 7 days per year).

Availability is defined as:

$$\% \text{ Availability} = \frac{(1 - \text{Cumulative Provider Account Downtime})}{\text{Total Time}} * 100$$

A Provider account shall be considered to be down, and downtime shall be accumulated, upon occurrence of any of the following:

1. One or more Users cannot link and log on to the Provider account. The downtime accumulated shall be calculated as:
   - Σ **for affected Users of 1/n * (Login Time)**, which is the time used by each affected User to try to link and log on to the Provider account, and where "n" is the total number of Users actively registered for that Provider account.

2. One or more Users can not access TS Information once they have logged on to a Provider account. The downtime accumulated shall be calculated as:
   - Σ **for affected Users of 1/n * (Access Time)**, which is the time used by each affected User to try to access data, and where "n" is the total number of Users actively registered for that Provider.

3. A **five (5) minute** penalty shall be added to the cumulative downtime for every time a User loses their connection to a Provider's account due to an OASIS Node momentary failure or problem.

5.5 BACKUP AND RECOVERY

The following backup and recovery requirements shall be met:

a. **Normal Backup of TS Information:** Backup of TS Information and equipment shall be provided within the OASIS Nodes so that no data or transaction logs are lost or become inaccessible by Users due to any single point of failure. Backed up data shall be no older than **30 seconds**. Single points of failure include the loss of one:

   - Disk drive or other storage device
   - Processor
   - Inter-processor communications (e.g. LAN)
   - Inter-OASIS communications
   - Software application
   - Database
   - Communication ports for access by Users
   - Any other single item which affects the access of TS Information by Users

b. **Spurious Failure Recovery Time:** After a spurious failure situation, all affected Users shall regain access to all TS Information **within 30 minutes**. A spurious failure is a temporary loss of services which can be overcome by rebooting a system or restarting a program. Permanent loss of any physical component is considered a catastrophic failure.

c. **Long-Term Backup:** Permanent loss of critical data due to a catastrophic failure shall be minimized through off-line storage on a **daily basis** and through off-site data storage on a **periodic basis.**

d. **Catastrophic Failure Recovery:** Recovery from a catastrophic failure or loss of an OASIS Node may be provided through the use of alternate OASIS Nodes which meet the same availability and response time requirements. TSIPs may set up prior agreements with other TSIPs as to which Nodes will act as backups to which other Nodes, and what procedure will be used to undertake the recovery. Recovery from a catastrophic failure shall be designed to be achieved **within 24 hours.**

5.6 TIME SYNCHRONIZATION

The following are the time requirements:

a. **Time Synchronization:** Time shall be synchronized on OASIS Nodes such that all time stamps will be accurate to within ± 0.5 second of official time. This synchronization may be handled over the network using NTP, or may be synchronized locally using time standard signals (e.g. WWVB, GPS equipment).

b. **Network Time Protocol (NTP):** OASIS Nodes shall support the Internet tool for time synchronization, Network Time Protocol (NTP), which is described in RFC-1305, version 3, so that Users shall be able to request the display and the downloading of current time on an OASIS Node for purposes of user applications which might be sensitive to OASIS time.

5.7 TS INFORMATION TIMING REQUIREMENTS

The TS Information timing requirements are as follows, except they are waived during emergencies.

a. **TS Information Availability:** The most recent Provider TS information shall be available on the OASIS Node within 5 minutes of its required posting time at least 98% of the time. The remaining 2% of the time the TS Information shall be available within 10 minutes of its scheduled posting time.

b. **Notification of Posted or Changed TS Information:** Notification of TS Information posted or changed by a Provider shall be made available within 60 seconds to the log.

c. **Acknowledgment by the TSIP:** Acknowledgment by the TSIP of the receipt of User Purchase requests shall occur within 1 minute. The actual negotiations and agreements on Purchase requests do not have time constraints.

5.8 TS INFORMATION ACCURACY

The following requirements relate to the accuracy of the TS information:

a. **TS Information Reasonability:** TS information posted and updated by the Provider shall be validated for reasonability and consistency through the use of limit checks and other validation methods.

b. **TS Information Accuracy:** Although precise measures of accuracy are difficult to establish, Providers shall use their best efforts to provide accurate information.

5.9 PERFORMANCE AUDITING

The following are the performance auditing requirements:

a. **User Help Desk Support**: TSIPs shall provide a "Help Desk" that is available at least during normal business hours (local time zone) and normal work days.

b. **Monitoring Performance Parameters:** TSIPs shall use their best efforts to monitor performance parameters. Any User shall be able to read or download these performance statistics.

5.10 MIGRATION REQUIREMENTS

The following are the migration requirements:

a. **Support for Legacy Capabilities:** Any time mandated upgrades or modifications to OASIS capabilities and tools are made to the OASIS, TSIPs shall continue to support the existing capabilities and tools for at least 3 months. This overlap will permit Users the time to upgrade their own systems to reflect these changes.

Appendix A

Data Element Dictionary

September 5, 1996

Version 1.1

Data Dictionary Element Name	Alias	Field Format : minimum characters {type of ASCII} maximum characters	Restricted Values	Definition of Data Element
ANCILLARY_SERVICE_ TYPE	ANCTYPE	1{ALPHANUMERIC}20	Free-form text	A reference to the ancillary service types defined by the Primary Provider or Seller.
ASSIGNMENT_REF	AREF	1{ALPHANUMERIC}12	Unique value	A unique reference number assigned by a Transmission Information Provider to provide a unique record for each transmission or ancillary service request. A single transmission or ancillary service request will be over a contiguous time period, i.e from a BEGTIME to an ENDTIME.
BEGDATE_HOUR	BEGHOUR	12{ALPHANUMIC}12	Valid date and time to hours: yyyy+mo+dd+hh +tz	Beginning Date, time, and time zone. Military time is used. Example: 1996021201PS
BEGDATE_SEC_QUEUED	BQUEUED	16{ALPHANUMERIC}16	Valid date and time to seconds: yyyy+mo+dd+hh +mm+ss+tz	Beginning date and time of queue.
BEGTIME	BTIME	16{ALPHANUMERIC}16	Valid Date and Time to seconds: yyyy+mo+dd+hh +mm+ss+tz	Beginning date and time. Note that for some templates when used as a query variable the time may be only valid up to the hour, day or month. If more data is given than is valid, the hour, day or month will be used to make the date and time inclusive, i.e. date or time will be truncated to valid hour, day or month.
BEGTIME_OF_LAST_POSTING	BLPOST	16{ALPHANUMERIC}16	Valid date and time to seconds: yyyy+mo+dd+hh +mm+ss+tz	Date and time to seconds that messages were posted. May be used to search for messages posted since a specific point in time.
BEGTIME_OF_LAST_UPDATE	BLUPDATE	16{ALPHANUMERIC}16	Valid date and time to seconds: yyyy+mo+dd+hh +mm+ss+tz	Date and time to seconds that data was last updated. May be used to search data updated since a specific point in time.
CAPACITY	CAP	1{NUMERIC}12	Non-negative number in units of MW	Transfer capability is the measure of the ability of the interconnected electric system to readily move or transfer power from one area to another over all transmission lines (or paths) between those areas under specified system conditions. In this context "area" may be an individual electric system, powerpool, control area, subregion, or NERC region or portion thereof.

Data Dictionary Element Name	Alias	Field Format : minimum characters {type of ASCII} maximum characters	Restricted Values	Definition of Data Element
CAPACITY_CURTAILED	CAPCUR	1{NUMERIC}12	Non-negative number in units of MW	The amount of transfer capability curtailed by the Primary provider for emergency reasons
CAPACITY_SCHEDULED	CAPSCH	1{NUMERIC}12	Non-negative number in units of MW	Transfer capability scheduled on each path
CAPACITY_TYPE	CAPTYPE	1{ALPHANUMERIC}50	Valid name from CAPACITY_TYPE in LIST template	The type of transfer capability being referenced. *Examples include Hourly-Total-Transmission-Capacity, Daily-Firm, Monthly-Non-Firm,* Hourly-*Firm-On-Peak, Daily-Firm-Off-Peak, Yearly-Non-Firm-On-Peak, Monthly-Non-Firm-Off-Peak*
COLUMN_HEADERS	HEADERS	1{ALPHANUMERIC}Limited to all the elements names in one Template	Headers surrounded with " and separated by commas. Limited to valid Template element names. Should use full element name and not alias.	Example: COLUMN_HEADER="PATH_NAME","POINT_OF_RECEIPT","POINT_OF_DELIVERY","SOURCE","SINK"
CONTROL_AREA	AREA	1{ALPHANUMERIC}20	Valid name of a control area	A part of the power system with metered tie lines and capable of matching generation and load while meeting scheduled interchange. Location of Ancillary Services is my CONTROL_AREA.
CURTAILMENT_OPTIONS	CUROPT	1{ALPHANUMERIC}80	Free form text	Customer options, if any, to avoid curtailment
CURTAILMENT_PROCEDURES	CURPROC	1{ALPHANUMERIC}80	Free form text	Curtailment procedures to be followed in the event of a curtailment
CURTAILMENT_REASON	CURREAS	1{ALPHANUMERIC}80	Free-form text	Reason for curtailment of service.
CUSTOMER	CUST	1{ALPHANUMERIC}25	Unique value	Any entity (or its designated agent) that is eligible to view OASIS information, to execute a service agreement, and/or to receive transmission service.
CUSTOMER_COMMENTS	CUSTCOM	1{ALPHANUMERIC} 80	Free-form text	Informative text.
CUSTOMER_DUNS	CUSTDUNS	1{NUMERIC}9	Unique DUNS number	Unique DUNS number for a Customer
CUSTOMER_E-MAIL	CUSTEMAIL	1{ALPHANUMERIC}25	Valid Internet E-Mail address	Internet E-Mail address of Customer contact person
CUSTOMER_FAX	CUSTFAX	14{ALPHANUMERIC}20	Area code and telephone number, plus any extensions (aaa)-nnn-nnnn xnnnn	FAX phone number of Customer contact person

Data Dictionary Element Name	Alias	Field Format : minimum characters {type of ASCII} maximum characters	Restricted Values	Definition of Data Element
CUSTOMER_NAME	CUSTNAME	1{ALPHANUMERIC}25	Free form text	Name of Customer contact person
CUSTOMER_PHONE	CUSTPHON	14{ALPHANUMERIC}20	Area code and telephone number, plus any extensions (aaa)-nnn-nnnn xnnnn	Telephone of Customer contact person
DATA_ROWS	ROWS	1{NUMERIC} unlimited	Positive Number	Number of records (rows) of data exclusive of header information that are to be uploaded or downloaded in a file.
DATE	DATE	8{ALPHANUMERIC}8	Valid date yyyy+mo+dd	Year, month and day: Example for April 12, 1996: 19960412
DATE_HOUR	HOUR	12{ALPHANUMERIC}12	Valid date and hour yyyy+mo+dd+hh +tz	Date and hour. Example for April 12, 1996 at 12:14 p.m. Pacific Standard Time: 1996041212PS
DATE_SEC_EXPIRES	TIMEEXP	16{ALPHANUMERIC}16	Valid date and time in seconds yyyy+mo+dd+hh +mm+ss+tz	Date and time to seconds a message or service offer expires and is no longer posted
DATE_SEC_POSTED	TIMEPSTD	16{ALPHANUMERIC}16	Valid date and time in seconds yyyy+mo+dd+hh +mm+ss+tz	Date and time to seconds a message or service offered was posted
DATE_SEC_QUEUED	QUEUED	16{ALPHANUMERIC}16	Valid date and time in seconds yyyy+mo+dd+hh +mm+ss+tz	For a valid request, this is the same time as the TIME_STAMP for a customer request. That is the time when the request is received by the TSIP.
DEAL_REF	DREF	1{ALPHANUMERIC}12	Unique value, Assigned by Customer	The unique reference assigned by a Customer to two or more service purchases to identify each of them as related to others in the same power service deal. These requests may be related to each other in time sequence through a single Provider, or as a series of wheels through multiple Providers, or a combination of both time and wheels. The User uses the DEAL_REF to uniquely identify a combination of requests relating to a particular deal.
ELEMENT_NAME	ELEMENT	1{ALPHANUMERIC}40	Valid template element name	Template element name as indicated in data dictionary
ENDDATE_HOUR	ENDHOUR	12{ALPHANUMERIC}12	Valid date and time to hour: yyyy+mo+dd +hh+tz	Date and time to hour

Data Dictionary Element Name	Alias	Field Format : minimum characters {type of ASCII} maximum characters	Restricted Values	Definition of Data Element
ENDDATE_SEC_QUEUED	EQUEUED	16{ALPHANUMERIC}16	Valid date and time yyyy+mo+dd+hh +mm+ss+tz	End date and time of queue
ENDTIME	ENDTIME	16{ALPHANUMERIC}16	Valid date and time yyyy+mo+dd+hh +mm+ss+tz	End date and time. Note that for some templates when used as a query variable the time may be only valid up to the hour, day or month. If more data is given than is valid, the hour, day or month will be used to make the date and time inclusive, i.e. date or time will be increased to include ENDTIME.
INTERFACE_TYPE	INTERFACE	1{ALPHANUMERIC}1	I,E	Type of interface define by path: Internal (I) to a control area or External (E) to a control area
LIST_ITEM	ITEM	1{alphanumeric}50	Free form text	Item from list, such as list of SELLERs, list of PATHs, list of PORs, list of PODs, List of CAPACITY_TYPEs, List of ANCILLARY_SERVICES_TYPEs, List of TEMPLATEs
LIST_ITEM_DESCRIPTION	ITEMDESC	0{ALPHANUMERIC}100	Free form text	A detailed description of the LIST_ITEM
LIST_NAME	LIST	1{alphanumeric}25	SELLER, PATH, CAPACITY_TYPE,POR,POD, ANCILLARY_SERVICE_TYPE, STUDY TEMPLATE	Name of list
MESSAGE	MSG	1{ALPHANUMERIC}200	Free form text	An informative text message
MONTH	MONTH	6{ALPHANUMERIC}6	Valid date yyyy+mo	Date year + month. Example April 1996: 199604
NEW_DATA	NEWDATA	1{ALPHANUMERIC}200	Any valid date element value	For audit log, the new updated value of a template data element after update.
OLD_DATA	OLDDATA	1{ALPHANUMERIC}200	Any valid data element value	For audit log, the old value of a template data element prior to being updated. This element is not applicable in the audit log for transaction events.
OPTIONAL_CODE	N/A	0{ALPHANUMERIC}25	Unique path name within region	OPTIONAL_CODE - 25 chars, unique for Path. If used for directionality, then the first 12 characters shall represent POR, followed by '-', followed by 12 characters which shall represent POD. Used by PATH_NAME.
OUTPUT_FORMAT	FMT	4{ALPHANUMERIC}4	HTML, DATA	Format of response, either hypertext markup language for presentation using a web browser or text for use in a downloaded file.

Data Dictionary Element Name	Alias	Field Format : minimum characters {type of ASCII} maximum characters	Restricted Values	Definition of Data Element
PATH_CODE	N/A	0{ALPHANUMERIC}12	Unique code for each path as defined by primary provider	Unique code within a Region for each path. Used by PATH_NAME
PATH_NAME	PATH	5{ALPHANUMERIC}50	Unique value	The unique name assigned to a single transmission line or the set of one or more parallel transmission lines whose power transfer capabilities are strongly interrelated and must be determined in aggregate. These lines are typically described as being on a path, corridor or interconnection in some regions, or as crossing an interface or cut-plane in other regions. Multiple lines may be owned by different parties and require prorating of capability shares. The name is constructed from the following codes, with each code separated by a "/": REGION_CODE - 2 chars, unique to OASIS System PRIMARY_PROVIDER_CODE - 4 chars, unique within Region PATH_CODE - 12 chars, unique for Primary Provider OPTIONAL_CODE - 25 chars, unique for Path. If used for directionality, then the first 12 characters shall represent POR, followed by '-', followed by 12 characters which shall represent POD SPARE_CODE - 3 chars
POINT_OF_DELIVERY	POD	1{ALPHANUMERIC}12	Unique value within Primary Provider	Point of Delivery is one or more point(s) of interconnection on the Transmission Provider's transmission system where capacity and/or energy transmitted by the Transmission Provider will be made available to the Receiving Party. This is used along with Point of Receipt to define a Path and direction of flow on that path. For internal paths, this would be a specific location(s) in the area. For an external path, this may be an area-to-area interface.

Data Dictionary Element Name	Alias	Field Format : minimum characters {type of ASCII} maximum characters	Restricted Values	Definition of Data Element
POINT_OF_RECEIPT	POR	1{ALPHANUMERIC}12	Unique value within Primary Provider	Point of Receipt is one or more point(s) of interconnection on the Transmission Provider's transmission system where capacity and/or energy transmitted will be made available to the Transmission Provider by the Delivering Party. This is used along with Point of Delivery to define a Path and direction of flow on that path. For internal paths, this would be a specific location(s) in the area. For an external path, this may be an area-to-area interface.
POSTING_REF	POSTREF	1{ALPHANUMERIC}12	Unique Value	Assigned by TSIP when Service or Message is received by TSIP. Unique number can be used by the user to modify or delete the posting.
PRECONFIRMED	PRECONF	2{ALPHA}3	YES or NO	Used by Customer to preconfirm sale in template transrequest or ancrequest. If customer indicates sale is preconfirmed, then the response is YES and the customer does not need to confirm the sale.
PRICE	PRICE	1{NUMERIC}5 + '.' + 2{NUMERIC}2	Positive number with 2 decimals	The current offered price of a Service in dollars and cents. May be used by Sellers as well as Customers to designate a price offered.
PRICE_UNITS	UNITS	1(ALPHA)20	Free form text	The units used for PRICE. Examples: $/MRhr, $/MWmonth
PRIMARY_ PROVIDER	PPROV	1{ALPHANUMERIC}25	Unique value	Name of an Owner of transmission services
PRIMARY_PROVIDER_COMMENTS	PPROVCOM	1{ALPHANUMERIC} 80	Free-form text	Informative text. Usually entered by the Primary Provider through a back end system.
PRIMARY_PROVIDER_CODE	N/A	1{ALPHANUMERIC}4	Unique code	Unique code for each Primary Provider. Used by PATH_NAME and in URL. Registered as part of URL at www.tsin.com .
PRIMARY_PROVIDER_DUNS	PPROVDUNS	1{NUMERIC}9	Valid DUNS number	Unique code for each Primary and Secondary Provider. Provided by Dun and Bradstreet.
REASSIGNED_BEGDATE_HOUR	RASBHOUR	16ALPHANUMERIC}16	Valid date and time to seconds: yyyy+mo+dd+hh+tz	Beginning date and time of the reassigned transmission service

Data Dictionary Element Name	Alias	Field Format : minimum characters {type of ASCII} maximum characters	Restricted Values	Definition of Data Element
REASSIGNED_CAPACITY	RASCAP	1{NUMERIC}12	Positive number, cannot exceed previous assigned capacity	The amount of transfer capability that was reassigned from one entity to another.
REASSIGNED_ENDDATE_HOUR	RASEHOUR	16{ALPHANUMERIC}16	Valid date and time to hour: yyyy+mo+dd+hh+tz	Date and time of the end of the transmission service that is reassigned to another User.
REASSIGNED_REF	REREF	1{ALPHANUMERIC}12	Unique value	When customer makes a purchase of a transmission service that was posted for resale and a new ASSIGNMENT_REF number is issued the previous ASSIGNMENT_REF number now becomes the REASSIGNMENT_REF. Also used by SELLER when posting transmission or ancillary services for resale to show the previous assignment reference number.
REGION_CODE	N/A	1{ALPHANUMERIC}2	Unique within OASIS System	Defined for NERC regions, with the following defined: E - ECAR I - MAIN S - SERC T - ERCOT A - MAPP P - SPP M - MAAC N - NPCC W - WSCC Second character or digit reserved for subregion id as defined by each region.
REQUEST_REF	RREF	1{ALPHANUMERIC}12	Unique value	A reference uniquely assigned by a Customer to a request for service from a Provider.
REQUEST_STATUS	RSTATUS	1{NUMERIC}3 +0{ALPHA}20	Error number+ !Successful/ !Unsuccessful	Massage status indicating message was successful or error code if unsuccessful. Example: 200 !Successful
RETURN_TZ	TZ	2{ALPHANUMERIC}2	PD,PS,ED,ES,MD,MS,CD,CS	A time zone code. May be set by Customer in a query. Returned date and time data is converted to this time zone.

Data Dictionary Element Name	Alias	Field Format : minimum characters {type of ASCII} maximum characters	Restricted Values	Definition of Data Element
SALE_REF	SREF	1{ALPHANUMERIC}12	Unique value	Identifier which is set by seller (including Primary Provider) when posting a service for sale
SELLER	SELLER	1{ALPHANUMERIC}25	Unique value	Organization name of Primary Provider or Reseller.
SELLER_COMMENTS	SELCOM	1{ALPHANUMERIC} 80	Free-form text	Informative text provided by the Seller
SELLER_DUNS	SELDUNS	1{NUMERIC}9	Valid DUNS number	Unique Data Universal Numbering System provided by Dun and Bradstreet. Code for a Primary Provider or Seller.
SELLER_E-MAIL	SELEMAIL	5{ALPHANUMERIC}60	Valid network reference	E-Mail address of Seller contact person
SELLER_FAX	SELFAX	14{ALPHANUMERIC}20	Area code and telephone number, plus any extensions Example: (aaa)-nnn-nnnn xnnnn	The fax telephone number for contact person at Seller.
SELLER_NAME	SELNAME	1{ALPHANUMERIC}25	Free form text	The name of an individual contact person at the Seller.
SELLER_PHONE	SELPHONE	14{ALPHANUMERIC}20	Area code and telephone number, plus any extensions (aaa)-nnn-nnnn xnnnn	The telephone number of a contact person as a Seller
SERVICE_DESCRIPTION	SVCDESC	1{ALPHANUMERIC} 200	Free-form text	Information regarding a service.
SINK	SINK	0{ALPHANUMERIC}14	Valid area name	The area in which the SINK is located.
SOURCE	SOURCE	0{ALPHANUMERIC}14	Valid area name	The area in which the SOURCE is located.
SPARE_CODE	N/A	0{ALPHANUMERIC}3	Defined by region	Spare code to be used at a later time. Used by PATH_NAME
STANDARDS_OR_PERSONNEL_ISSUES	STDPERS	1{ALPHANUMERIC}800	Free form text	Informative text stating violations of Standards of Conduct or Transfer of Personnel by Primary Provider or text stating transfers of personnel between transmission, operations and marketing functions as required by the FERC Standards of Conduct.

Data Dictionary Element Name	Alias	Field Format : minimum characters {type of ASCII} maximum characters	Restricted Values	Definition of Data Element
STATUS	STATUS	5{ALPHANUMERIC}25	Valid field (QUEUED, RECEIVED, STUDY, ACCEPTED, REFUSED, CONFIRMED, WITHDRAWN, DISPLACED)	QUEUED - initial status assigned by TSIP on receipt of "customer capacity purchase request" RECEIVED- reassigned by TP to acknowledge QUEUED requests and indicate the service request is being evaluated STUDY- assigned by TP to indicate some level of study is required or being performed to evaluate service request ACCEPTED- assigned by TP to indicate service request has been approved/accepted REFUSED- assigned by TP to indicate service request has been denied, SELLER_COMMENTS should be used to communicate reason for denial of service CONFIRMED- assigned by TC in response to TP posting "ACCEPTED" status to confirm service WITHDRAWN- assigned by TC at any point in request evaluation to withdraw the request from any further action DISPLACED- assigned by TP when a "CONFIRMED" request from a TC is displaced by a longer term request and the TC has exercised right of first refusal (i.e. refused to match T&Cs of new request)
STATUS_COMMENTS	STACOM	1{ALPHANUMERIC} 80	Free form text	Informative text.
TARIFF	TARIFF	1{ALPHANUMERIC} 150	Free form text. Name and description of Tariff	Tariffs approved by FERC
TEMPLATE	TEMPL	1{ALPHANUMERIC}20	Valid Name of Template from Section 4.3 or from LIST template	The name of a logical collection of DATA_ELEMENTS in a User's interaction with an OASIS Node.
TIME_OF_LAST_UPDATE	TLUPDATE	16{ALPHANUMERIC}16	Valid date and time yyyy+mo+dd+hh+mm+ss+tz	Date and time to seconds that data was last updated on OASIS Node Example: 19960212145530PS
TIME_STAMP	TSTAMP	16{ALPHANUMERIC}16	Valid date and Time to seconds yyyy+mo+dd+hh+mm+ss+tz	Time a file of data is sent for download from an OASIS Node.
VERSION	VER	1{REAL NUMBER}6	Range of 1.0 to 9999.9	Specifies which version of the OASIS Standards and Communication Protocol to use when interpreting the request

The Commission orders: The Standards and Protocols document is hereby modified, as discussed in the body of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24326 Filed 9–23–96; 8:45 am]

BILLING CODE 6717–01–C

Federal Register

Tuesday
September 24, 1996

Part V

Department of Education

34 CFR Part 656

Higher Education Programs in Modern Foreign Language Training and Area Studies; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 656

RIN 1840–AC27

Higher Education Programs in Modern Foreign Language Training and Area Studies—National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies—National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies (National Resource Centers Program). These final regulations are needed to improve the application review process and to update the regulations in light of developments in the field of foreign language, area, and international studies. In the spirit of reinventing government, the goal of the final regulations is to markedly reduce the burden associated with the application process. These final regulations (a) reduce the burden on applicants and readers by clarifying and redesigning selection criteria to remove ambiguity and eliminate repetition of information presented in applications, (b) facilitate grantee selection by providing a larger point spread for greater differentiation of rankings, and (c) improve program quality, efficiency, and flexibility by adding changes program management experience shows to be appropriate.

EFFECTIVE DATE: These regulations take effect on October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Cheryl Gibbs, U.S. Department of Education, 600 Independence Avenue, S.W., Suite 600–B, Portals Building, Washington, D.C. 20202–5331. Telephone (202) 401–9785. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Resource Centers Program is one of several international education programs authorized under Part A of Title VI of the Higher Education Act of 1965, as amended. The main provisions of the regulations govern the awarding of grants designed to assist eligible institutions of higher education in improving and developing their programs in modern foreign languages and area or international studies.

On March 28, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (61 FR 13996). The NPRM included a discussion of the proposed changes in the regulations for the National Resource Centers Program by modifying the selection criteria for applications and by adding activities to the list of definitions and to the list of priorities.

As a result of the comments received, the Secretary has increased the number of points allocated to the ''Strength of library'' criterion; has replaced the term ''teaching assistants'' with the term ''instructional assistants'' in two criteria to eliminate inconsistencies among applicant institutions regarding the position description and duties; and has rephrased the ''Quality of the Center's language instructional program'' criterion to eliminate ambiguity regarding the information requested on student enrollments and the Center's offerings.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 87 parties submitted comments, 74 of which addressed the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

What selection criteria does the Secretary use to evaluate an application for a comprehensive Center? (§ 656.21)

What selection criteria does the Secretary use to evaluate an application for an undergraduate Center? (§ 656.22)

—Impact and evaluation. (§§ 656.21(c) and 656.22(c))

Comments: One commenter stated that the kinds of quantifiable data being requested to validate a Center's success may prompt institutions to submit inflated data. The commenter stated that a Center's achievements may be documented by other unspecified indicators and urged the Secretary to develop measurements that solicit more relevant and meaningful feedback.

Discussion: While there are alternative mechanisms available to measure impact, the Secretary requested outcome-based data elements because concrete data are needed to assess whether Centers are fulfilling the purposes contained in the statute and to assess applicant institutions' comparative strengths. The Secretary understands the concern over possible inflated data. All applicants, however, must attest to the accuracy of their applications under the penalty of perjury and eventual grantees are further subject to the provisions of the Federal False Claims Act.

Changes: None.

—Strength of library. (§§ 656.21(e) and 656.22(e))

Comments: Several commenters favored the inclusion of factors that evaluate an institution's capacity for electronic access to research materials and cooperative arrangements for sharing library resources. They applauded the Secretary's efforts to respond to current technological and economic trends affecting institutions.

One commenter stated that the new factors detracted from recognizing the exemplary qualities and practices of traditional research libraries and that emphasis on alternative arrangements jeopardized institutional incentive for supporting libraries in resource-allocation plans.

Several commenters opposed the allocation of only 10 points out of 160 total points, which reduced the proportion of points for this criterion in comparison with the previous regulations. They questioned whether the decrease reflects the Secretary's perception of the role an institution's library plays in promoting the goals of national Centers. They believed the Secretary ought to increase the number of points allocated to this criterion from 10 to 15 or 16 points to effectively assess institutional support for and the impact of library resources on the Center's area and language programs, research, and academic training needs.

Discussion: The Secretary agrees that an institution's library acquisitions and human resources are important to ensuring high quality, successful Centers. The Secretary agrees that the points allocated to this criterion should be increased to avoid de-emphasizing the importance of library resources.

Changes: The Secretary has increased the allocation of points for this criterion from 10 to 15 points.

—Quality of the Center's non-language instructional program. (§§ 656.21(f) and 656.22(f))

—Quality of the Center's language instructional program. (§§ 656.21(g) and 656.22(g))

Comments: One commenter suggested replacing ''teaching assistants'' with the term ''instructional assistants'' to avoid inconsistencies among applicant institutions regarding the position description and duties.

Discussion: The Secretary agrees that this revision is helpful for the reason stated by the commenter.

Changes: The Secretary has replaced the term ''teaching assistants'' with the term ''instructional assistants'' in §§ 656.21(f)(3), 656.21(g)(3), 656.22(f)(3), and 656.22(g)(3).

—*Quality of the Center's language instructional program. (§§ 656.21(g) and 656.22(g))*

Comments: One commenter was concerned that by limiting student enrollment information in §§ 656.21(g)(1) and 656.22(g)(1) to courses offered directly by the applicant, the Secretary was not recognizing the importance of student enrollment in language programs offered by other institutions (for example, summer study programs) during the course of the students' overall language study at the applicant institution. The commenter requested that the Secretary rephrase the criterion to broaden the enrollment data that can be considered.

Discussion: The Secretary agrees that enrollment in language programs not offered directly by the Center, but nevertheless incorporated into a student's program of study, should be recognized under this criterion.

Changes: The Secretary has revised §§ 656.21(g)(1) and 656.22(g)(1) to include student enrollment in programs offered by the Center or other providers.

—*Outreach activities. (§§ 656.21(i) and 656.22(i))*

Comments: A few commenters supported the increase in points for outreach; however, one stated that the equal distribution of evaluation points among the outreach areas penalizes institutions that have developed particularly effective and exemplary initiatives in one of the outreach areas.

One commenter requested an addition of points beyond the increase proposed to reflect a more realistic valuation of the extensive efforts undertaken by institutions to maintain successful outreach activities.

One commenter was concerned that it may be more difficult for applicant institutions located in rural settings to establish and maintain business and media activities of sufficient strength to demonstrate national and regional impact.

Discussion: The Secretary believes the proposed scope of outreach functions and their point allocations are sufficient to enable all applicant institutions to demonstrate a meaningful impact at the national and regional levels. The Secretary also believes that it is appropriate to expect national Centers to engage in outreach to all three areas, given the purpose of the program.

Changes: None.

—*Other Changes. (§§ 656.21(c)(2), 656.22(c)(2), 656.21(i), 656.22(i), 656.21(j), and 656.22(j))*

Comments: None.

Discussion: In the ''Impact and evaluation'' criterion, the Secretary believes that requiring that the applicant's evaluation plan be comprehensive and objective at the time of the submission of the application emphasizes the importance of the applicant's participation in and ongoing commitment to improving program quality and efficiency.

Changes: The Secretary has changed ''that will be'' to ''that is'' in §§ 656.21(c)(2) and 656.22(c)(2).

Comments: None.

Discussion: The Secretary did not receive comments regarding whether the ''Outreach activities'' criterion involves foreign or domestic communities. However, the Secretary believes that clarifying that these activities involve communities located in the United States avoids confusion and is consistent with the regional and national impact of the activities.

Changes: The Secretary has added the word ''domestic'' after the words ''involvement in,'' in §§ 656.21(i) and 656.22(i).

Comments: None.

Discussion: The Secretary did not receive comments regarding the awarding of additional points to applicants. However, the Secretary believes that the awarding of additional points should be done only when the Secretary establishes a competitive priority.

Changes: The Secretary has changed ''specific'' to ''competitive'' in the ''Degree to which priorities are served'' criterion in §§ 656.21(j) and 656.22(j).

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collections of information in these final regulations is displayed at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the final regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 656

Colleges and universities, Education, International education, Reporting and recordkeeping requirements.

Dated: September 18, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number 84.015 National Resource Centers and Foreign Language and Area Studies Fellowships Programs.)

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 656 to read as follows:

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

Subpart A—General

Sec.

Authority: 20 U.S.C. 1122, unless otherwise noted.

Subpart A—General

§ 656.1 What is the National Resource Centers Program?

Under the National Resource Centers Program for Foreign Language and Areas Studies or Foreign Language and International Studies (National Resource Centers Program), the Secretary awards grants to institutions of higher education and combinations of institutions to establish, strengthen, and operate comprehensive and undergraduate Centers that will be national resources for—

(a) Stimulating the attainment of foreign language acquisition and fluency;

(b) Instruction in fields needed to provide a full understanding of the areas, regions, or countries in which the foreign language is commonly used;

(c) Research and training in international studies and the international and foreign language aspects of professional and other fields of study; and

(d) Instruction and research on issues in world affairs which concern one or more countries.

(Authority: 20 U.S.C. 1122)

§ 656.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education is eligible to receive a grant under this part.

(Authority: 20 U.S.C. 1122)

§ 656.3 What activities define a comprehensive or undergraduate National Resource Center?

A comprehensive or undergraduate National Resource Center—

(a) Teaches at least one modern foreign language;

(b) Provides—

(1) Instruction in fields necessary to provide a full understanding of the areas, regions, or countries in which the languages taught are commonly used;

(2) Resources for training and research in international and foreign language aspects of professional and other fields of study; or

(3) Opportunities for training and research on issues in world affairs that concern one or more countries;

(c) Provides outreach and consultative services on a national, regional, and local basis;

(d) Maintains linkages with overseas institutions of higher education and other organizations that may contribute to the teaching and research of the Center;

(e) In the case of a comprehensive Center—

(1) Maintains specialized library collections; and

(2) Employs scholars engaged in training and research that relates to the subject area of the Center; and

(f) In the case of an undergraduate Center—

(1) Maintains library holdings, including basic reference works, journals, and works in translation; and

(2) Employs faculty with strong credentials in language, area, and international studies.

(Authority: 20 U.S.C. 1122)

§ 656.4 What types of Centers receive grants?

The Secretary awards grants to Centers that—

(a) Focus on—

1) A single country or on a world area (such as East Asia, Africa, or the Middle East) and offer instruction in the principal language or languages of that country or area and those disciplinary fields necessary to provide a full understanding of the country or area; or

(2) International studies or the international aspects of contemporary issues or topics (such as international business or energy) while providing instruction in modern foreign languages; and

(b) Provide training at the—

(1) Graduate, professional, and undergraduate levels, as a comprehensive Center; or

(2) Undergraduate level only, as an undergraduate Center.

(Authority: 20 U.S.C. 1122)

§ 656.5 What activities may be carried out?

(a) A Center may carry out any of the activities described in § 656.3 under a grant received under this part.

(b) The Secretary may make an additional grant to a comprehensive Center for any one or a combination of the following purposes:

(1) Linkage or outreach between foreign language, area studies, and other international fields and professional schools and colleges.

(2) Linkage or outreach with 2- and 4-year colleges and universities.

(3) Linkage or outreach with departments or agencies of Federal and State governments.

(4) Linkage or outreach with the news media, business, professional, or trade associations.

(5) Summer institutes in foreign area and other international fields designed to carry out the activities in paragraphs (b)(1) through (4) of this section.

(Authority: 20 U.S.C. 1122)

§ 656.6 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 655.

(b) The regulations in this Part 656.

(Authority: 20 U.S.C. 1122)

§ 656.7 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR Part 655.

(b) *Area studies* means a program of comprehensive study of the aspects of a world area's society or societies, including study of history, culture, economy, politics, international relations, and languages.

(c) *Center* means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational resources, including language training and various academic disciplines, in the area and subject matters described in § 656.3.

(d) *Comprehensive Center* means a Center that—

(1) Contributes significantly to the national interest in advanced research and scholarship;

(2) Offers intensive language instruction;

(3) Maintains important library collections related to the area of its specialization;

(4) Makes training available to a graduate, professional, and undergraduate clientele; and

(5) Engages in curriculum development and community outreach.

(e) For purposes of this section, *intensive language instruction* means instruction of at least five contact hours per week during the academic year or the equivalent of a full academic year of

language instruction during the summer.

(f) *Undergraduate Center* means an administrative unit of an institution of higher education that—

(1) Contributes significantly to the national interest through the education of students who matriculate into advanced language and area studies programs or professional school programs;

(2) Incorporates substantial international and foreign language content into baccalaureate degree program;

(3) Makes training available predominantly to undergraduate students; and

(4) Engages in research, curriculum development, and community outreach.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does One Apply for a Grant?

§ 656.10 What combined application may an institution submit?

An institution that wishes to apply for a grant under this part and for an allocation of fellowships under 34 CFR Part 657 may submit one application for both.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Make a Grant?

§ 656.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a comprehensive Center under the criteria contained in § 656.21, and for an undergraduate Center under the criteria contained in § 656.22.

(b) In general, the Secretary awards up to 155 possible points for these criteria. However, if the criterion in § 656.21(j) or § 656.22(j) is used, the Secretary awards up to 165 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

§ 656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?

The Secretary uses the following criteria in evaluating an application for a comprehensive Center:

(a) *Program planning and budget.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which the activities for which the applicant seeks funding are of high quality and directly related to the purpose of the National Resource Centers Program (5 points);

(2) The extent to which the applicant provides a development plan or timeline demonstrating how the proposed activities will contribute to a strengthened program and whether the applicant uses its resources and personnel effectively to achieve the proposed objectives (5 points);

(3) The extent to which the costs of the proposed activities are reasonable in relation to the objectives of the program (5 points); and

(4) The long-term impact of the proposed activities on the institution's undergraduate, graduate, and professional training programs (5 points).

(b) *Quality of staff resources.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which teaching faculty and other staff are qualified for the current and proposed Center activities and training programs, are provided professional development opportunities (including overseas experience), and participate in teaching, supervising, and advising students (10 points);

(2) The adequacy of Center staffing and oversight arrangements, including outreach and administration and the extent to which faculty from a variety of departments, professional schools, and the library are involved (5 points); and

(3) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (5 points).

(c) *Impact and evaluation.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which the Center's activities and training programs have a significant impact on the university, community, region, and the Nation as shown through indices such as enrollments, graduate placement data, participation rates for events, and usage of Center resources; and the extent to which the applicant supplies a clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (10 points); and

(2) The extent to which the applicant provides an evaluation plan that is comprehensive and objective and that will produce quantifiable, outcome-measure-oriented data; and the extent to which recent evaluations have been used to improve the applicant's program (10 points).

(d) *Commitment to the subject area on which the Center focuses.* (10 points) The Secretary reviews each application to determine the extent to which the institution provides financial and other support to the operation of the Center, teaching staff for the Center's subject area, library resources, linkages with institutions abroad, outreach activities, and qualified students in fields related to the Center.

(e) *Strength of library.* (15 points) The Secretary reviews each application to determine—

(1) The strength of the institution's library holdings (both print and non-print, English and foreign language) in the subject area and at the educational levels (graduate, professional, undergraduate) on which the Center focuses; and the extent to which the institution provides financial support for the acquisition of library materials and for library staff in the subject area of the Center (10 points); and

(2) The extent to which research materials at other institutions are available to students through cooperative arrangements with other libraries or on-line databases and the extent to which teachers, students, and faculty from other institutions are able to access the library's holdings (5 points).

(f) *Quality of the Center's non-language instructional program.* (20 points) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings in a variety of disciplines, including the extent to which courses in the Center's subject matter are available in the institution's professional schools (5 points);

(2) The extent to which the Center offers depth of specialized course coverage in one or more disciplines of the Center's subject area (5 points);

(3) The extent to which the institution employs a sufficient number of teaching faculty to enable the Center to carry out its purposes and the extent to which instructional assistants are provided with pedagogy training (5 points); and

(4) The extent to which interdisciplinary courses are offered for undergraduate and graduate students (5 points).

(g) *Quality of the Center's language instructional program.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which the Center provides instruction in the languages of the Center's subject area and the extent to which students enroll in the study of

the languages of the subject area through programs or instruction offered by the Center or other providers (5 points);

(2) The extent to which the Center provides three or more levels of language training and the extent to which courses in disciplines other than language, linguistics, and literature are offered in appropriate foreign languages (5 points);

(3) Whether sufficient numbers of language faculty are available to teach the languages and levels of instruction described in the application and the extent to which language teaching staff (including faculty and instructional assistants) have been exposed to current language pedagogy training appropriate for performance-based teaching (5 points); and

(4) The quality of the language program as measured by the performance-based instruction being used or developed, the adequacy of resources for language teaching and practice, and language proficiency requirements (5 points).

(h) *Quality of curriculum design.* (15 points) The Secretary reviews each application to determine—

(1) The extent to which the Center's curriculum has incorporated undergraduate instruction in the applicant's area or topic of specialization into baccalaureate degree programs (for example, major, minor, or certificate programs) and the extent to which these programs and their requirements (including language requirements) are appropriate for a Center in this subject area and will result in an undergraduate training program of high quality (5 points);

(2) The extent to which the Center's curriculum provides training options for graduate students from a variety of disciplines and professional fields and the extent to which these programs and their requirements (including language requirements) are appropriate for a Center in this subject area and result in graduate training programs of high quality (5 points); and

(3) The extent to which the Center provides academic and career advising services for students; the extent to which the Center has established formal arrangements for students to conduct research or study abroad and the extent to which these arrangements are used; and the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs (5 points).

(i) *Outreach activities.* (15 points) The Secretary reviews each application to determine the extent to which the Center demonstrates a significant and measurable regional and national impact of, and faculty and professional school involvement in, domestic outreach activities that involve—

(1) Elementary and secondary schools (5 points);

(2) Postsecondary institutions (5 points); and

(3) Business, media, and the general public (5 points).

(j) *Degree to which priorities are served.* (10 points) If, under the provisions of § 656.23, the Secretary establishes competitive priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Approved by the Office of Management and Budget under control number 1840–0068.)

(Authority: 20 U.S.C. 1122)

§ 656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?

The Secretary uses the following criteria in evaluating an application for an undergraduate Center:

(a) *Program planning and budget.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which the activities for which the applicant seeks funding are of high quality and directly related to the purpose of the National Resource Centers Program (5 points);

(2) The extent to which the applicant provides a development plan or timeline demonstrating how the proposed activities will contribute to a strengthened program and whether the applicant uses its resources and personnel effectively to achieve the proposed objectives (5 points);

(3) The extent to which the costs of the proposed activities are reasonable in relation to the objectives of the program (5 points); and

(4) The long-term impact of the proposed activities on the institution's undergraduate training program (5 points).

(b) *Quality of staff resources.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which teaching faculty and other staff are qualified for the current and proposed Center activities and training programs, are provided professional development opportunities (including overseas experience), and participate in teaching, supervising, and advising students (10 points);

(2) The adequacy of Center staffing and oversight arrangements, including outreach and administration and the extent to which faculty from a variety of departments, professional schools, and the library are involved (5 points); and

(3) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (5 points).

(c) *Impact and evaluation.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which the Center's activities and training programs have a significant impact on the university, community, region, and the Nation as shown through indices such as enrollments, graduate placement data, participation rates for events, and usage of Center resources; the extent to which students matriculate into advanced language and area or international studies programs or related professional programs; and the extent to which the applicant supplies a clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (10 points); and

(2) The extent to which the applicant provides an evaluation plan that is comprehensive and objective and that will produce quantifiable, outcome-measure-oriented data; and the extent to which recent evaluations have been used to improve the applicant's program (10 points).

(d) *Commitment to the subject area on which the Center focuses.* (10 points) The Secretary reviews each application to determine the extent to which the institution provides financial and other support to the operation of the Center, teaching staff for the Center's subject area, library resources, linkages with institutions abroad, outreach activities, and qualified students in fields related to the Center.

(e) *Strength of library.* (15 points) The Secretary reviews each application to determine—

(1) The strength of the institution's library holdings (both print and non-print, English and foreign language) in the subject area and at the educational levels (graduate, professional, undergraduate) on which the Center focuses; and the extent to which the institution provides financial support for the acquisition of library materials and for library staff in the subject area of the Center (10 points); and

(2) The extent to which research materials at other institutions are available to students through cooperative arrangements with other

libraries or on-line databases and the extent to which teachers, students, and faculty from other institutions are able to access the library's holdings (5 points).

(f) *Quality of the Center's non-language instructional program.* (20 points) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings in a variety of disciplines (5 points);

(2) The extent to which the Center offers depth of specialized course coverage in one or more disciplines of the Center's subject area (5 points);

(3) The extent to which the institution employs a sufficient number of teaching faculty to enable the Center to carry out its purposes and the extent to which instructional assistants are provided with pedagogy training (5 points); and

(4) The extent to which interdisciplinary courses are offered for undergraduate students (5 points).

(g) *Quality of the Center's language instructional program.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which the Center provides instruction in the languages of the Center's subject area and the extent to which students enroll in the study of the languages of the subject area through programs offered by the Center or other providers (5 points);

(2) The extent to which the Center provides three or more levels of language training and the extent to which courses in disciplines other than language, linguistics, and literature are offered in appropriate foreign languages (5 points);

(3) Whether sufficient numbers of language faculty are available to teach the languages and levels of instruction described in the application and the extent to which language teaching staff (including faculty and instructional assistants) have been exposed to current language pedagogy training appropriate for performance-based teaching (5 points); and

(4) The quality of the language program as measured by the performance-based instruction being used or developed, the adequacy of resources for language teaching and practice, and language proficiency requirements (5 points).

(h) *Quality of curriculum design.* (15 points) The Secretary reviews each application to determine—

(1) The extent to which the Center's curriculum has incorporated undergraduate instruction in the applicant's area or topic of specialization into baccalaureate degree programs (for example, major, minor, or certificate programs) and the extent to which these programs and their requirements (including language requirements) are appropriate for a Center in this subject area and will result in an undergraduate training program of high quality (10 points); and

(2) The extent to which the Center provides academic and career advising services for students; the extent to which the Center has established formal arrangements for students to conduct research or study abroad and the extent to which these arrangements are used; and the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs (5 points).

(i) *Outreach activities.* (15 points) The Secretary reviews each application to determine the extent to which the Center demonstrates a significant and measurable regional and national impact of, and faculty and professional school involvement in, domestic outreach activities that involve—

(1) Elementary and secondary schools (5 points);

(2) Postsecondary institutions (5 points); and

(3) Business, media and the general public (5 points).

(j) *Degree to which priorities are served.* (10 points) If, under the provisions of § 656.23, the Secretary establishes competitive priorities for Centers, the Secretary considers the degree to which those priorities are being served. (Approved by the Office of Management and Budget under control number 1840–0068.)

(Authority: 20 U.S.C. 1122)

§ 656.23 What priorities may the Secretary establish?

(a) The Secretary may select one or more of the following funding priorities:

(1) Specific countries or world areas, such as, for example, East Asia, Africa, or the Middle East.

(2) Specific focus of a Center, such as, for example, a single world area; international studies; a particular issue or topic, e.g., business, development issues, or energy; or any combination.

(3) Level or intensiveness of language instruction, such as intermediate or advanced language instruction, or instruction at an intensity of 10 contact hours or more per week.

(4) Types of activities to be carried out, for example, cooperative summer intensive language programs, course development, or teacher training activities.

(b) The Secretary may select one or more of the activities listed in § 656.5 as a funding priority.

(c) The Secretary announces any priorities in the application notice published in the Federal Register.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 656.30 What are allowable costs and limitations on allowable costs?

(a) *Allowable costs.* Except as provided under paragraph (b) of this section, a grant awarded under this part may be used to pay all or part of the cost of establishing, strengthening, or operating a comprehensive or undergraduate Center including, but not limited to, the cost of—

(1) Faculty and staff salaries and travel;

(2) Library acquisitions;

(3) Teaching and research materials;

(4) Curriculum planning and development;

(5) Bringing visiting scholars and faculty to the Center to teach, conduct research, or participate in conferences or workshops; and

(6) Training and improvement of staff.

(b) *Limitations on allowable costs.* The following are limitations on allowable costs:

(1) Equipment costs exceeding 10 percent of the grant are not allowable.

(2) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the Center focuses.

(3) Grant funds may not be used to supplant funds normally used by applicants for purposes of this part.

(Authority: 20 U.S.C. 1122)

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Part VI

Department of Education

34 CFR Part 657

Higher Education Programs in Modern Foreign Language Training and Area Studies—Foreign Language and Area Studies Fellowships Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 657

RIN 1840–AC28

Higher Education Programs in Modern Foreign Language Training and Area Studies—Foreign Language and Area Studies Fellowships Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies—Foreign Language and Area Studies (FLAS) Fellowships Program. These final regulations are needed to improve the application review process and to update the regulations in light of developments in the field of foreign language, area, and international studies. In the spirit of reinventing government, the goal of the final regulations is to markedly reduce the burden associated with the application process. These final regulations are intended to (a) Reduce the burden on applicants and readers by clarifying and restructuring selection criteria to remove ambiguity and eliminate repetition of information presented in applications, (b) facilitate funding decisions by providing a larger point spread for greater differentiation of rankings, (c) simplify the application process for applicants, improve the cost-effectiveness of the program, and standardize program management by adopting the fellowship award allocation system currently used to administer other Federal fellowship programs, and (d) improve program quality, efficiency, and flexibility by adopting changes program management experience shows to be appropriate.

EFFECTIVE DATE: These regulations take effect on October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Cheryl Gibbs, U.S. Department of Education, 600 Independence Avenue, S.W., Suite 600–B, Portals Building, Washington, D.C. 20202–5331. Telephone (202) 401–9785. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Foreign Language and Area Studies Fellowships Program is one of several international education programs authorized under Part A of Title VI of the Higher Education Act of 1965, as amended. The main provisions of the regulations govern the awarding of grants designed to provide fellowship assistance to students enrolled in advanced programs of modern foreign language and area or international studies.

On March 28, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (61 FR 14006). The NPRM included a discussion of the proposed changes in the regulations for the Foreign Language and Area Studies Fellowships Program by modifying the selection criteria for applications, by eliminating references to undergraduate programs and fellowship recipients in keeping with statutory requirements, by adopting a new system of allocating fellowship awards, by easing restrictions on the use of fellowship awards abroad, and by clarifying that only academic year awards may be used for research abroad.

As a result of the comments received, the Secretary has increased the number of points allocated to the ''Strength of library'' criterion, has replaced the term ''teaching assistants'' with the term ''instructional assistants'' in the appropriate criteria to eliminate inconsistencies among applicant institutions regarding this position; has rephrased the ''Quality of the Center's language instructional program'' criterion to eliminate ambiguity regarding the information requested on student enrollments and the Center's offerings; and has eliminated an evaluation factor in § 657.21(a).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 87 parties submitted comments, 74 of which addressed the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed. Comments not related to the proposed regulations are not addressed.

What criteria does the Secretary use in selecting institutions for an allocation of fellowships? (§ 657.21)

—Foreign language and area studies fellowships awardee selection procedures. (§ 657.21(a))

Comments: One commenter suggested decreasing the number of total points available for this criterion because the factors used to select FLAS awardees do not necessarily allow readers to differentiate between academic programs of high quality. The commenter suggested that the Secretary eliminate the second factor in this criterion because it requests information that is not relevant to the process for selecting institutions for an allocation of fellowships.

Discussion: The Secretary believes that the procedures used to select FLAS awardees are important elements of the grantee's plan of operation. The Secretary also believes that the first factor in this criterion covers this information and allows readers to assess the likelihood of the applicant's meeting the announced competitive priorities for the FLAS program as well as the potential impact of the grant. The Secretary agrees that the second element of the criterion, the extent to which the applicant provides information about current and prospective applicant-to-award ratios, is not critical to the readers and should be eliminated to emphasize the importance of the selection procedures. The Secretary does not wish to decrease the total number of points for this criterion, however.

Changes: Section 657.21(a)(2) has been eliminated.

—Impact and evaluation. (§ 657.21(c))

Comments: One commenter stated that the kinds of quantifiable data being requested to validate a Center's success may prompt institutions to submit inflated data. The commenter stated that an applicant's achievements also may be documented by other unspecified indicators and urged the Secretary to develop measurements that solicit more relevant and meaningful feedback.

Discussion: While there are alternative mechanisms that may be available to measure impact, the Secretary requested outcome-based data elements because concrete data are needed to assess whether Centers are fulfilling the purposes contained in the statute and to assess applicant institutions' comparative strengths. The Secretary understands the concern over possible inflated data. All applicants, however, must attest to the accuracy of their applications under the penalty of perjury and eventual grantees are further subject to the provisions of the Federal False Claims Act.

Changes: None.

—Strength of library. (§ 657.21(e))

Comments: Several commenters favored the inclusion of factors that evaluate an institution's capacity for electronic access to research materials and cooperative arrangements for

sharing library resources. They applauded the Secretary's efforts to respond to current technological and economic trends affecting institutions.

One commenter stated that the new factors detracted from recognizing the exemplary qualities and practices of traditional research libraries and that emphasis on these alternative strategies jeopardized institutional incentive for supporting libraries in resource-allocation plans.

Discussion: The Secretary believes that the inclusion of information about electronic access to research materials and cooperative resource-sharing arrangements reflects current national trends in libraries. The strength of traditional collections still receives 10 of the possible 15 points for this criterion.

Changes: None.

—*Quality of the applicant's non-language instructional program. (§§ 657.21(f) and 657.21(g))*

Comments: One commenter suggested replacing ''teaching assistants'' with the term ''instructional assistants'' to avoid inconsistencies among applicant institutions regarding the position description and duties.

Discussion: The Secretary agrees that this revision is helpful for the reason stated by the commenter.

Changes: The Secretary has replaced the term ''teaching assistants'' with the term ''instructional assistants'' in §§ 657.21(f)(3) and 657.21(g)(3).

—*Quality of the applicant's language instructional program. (§ 657.21(g))*

Comments: One commenter was concerned that by limiting student enrollment information in § 657.21(g)(1) to courses offered directly by the applicant, the Secretary was not recognizing the importance of student enrollment in language programs offered by other institutions (for example, summer study programs) during the course of the students' overall language study at the applicant institution. The commenter requested that the Secretary rephrase the criterion to broaden the enrollment data that can be considered.

Discussion: The Secretary agrees that the extent to which students from the Center's institution study foreign languages, both at the institution and through off-campus programs and courses, should be recognized under this criterion.

Changes: The Secretary has revised § 657.21(g)(1) to include student enrollment in programs offered by the Center or other providers.

What is the amount of a fellowship? (§ 657.31)

Comments: Most comments received from postsecondary faculty and administrators supported a standard institutional payment plus subsistence allowance because this system is equitable for both public and private institutions of higher education. These commenters also observed that the system will be more cost-effective and more equitable than the previous system of allocating FLAS funds.

One commenter asked whether the new cost-of-education allowance system will permit institutions to reallocate unused portions of academic year fellowship awards to make awards to additional fellowship recipients. The commenter noted that frequently there are award recipients who complete their required courses without having to use the entire amount of the fellowship award.

Several commenters believed the new cost-of-education allowance system substantially simplifies institutional administrative procedures for grantees.

One commenter disagreed that the new cost-of-education allowance system simplifies grants administration for institutions.

A few commenters opposed a standard institutional payment because they believed it will inhibit some institutions with high tuition graduate and professional programs from applying for the fellowships. The commenters stated that institutions do not have the financial resources to pay the difference between the standard institutional payment and high tuition costs, thereby making the fellowship awards less desirable to potential applicant institutions. One commenter suggested rectifying this problem by eliminating the requirement that institutions provide full fellowships to individual students. This commenter felt that institutions should be allowed to require students to share the cost of the fellowship.

Two commenters believed that the cost-of-education allowance system will inhibit professional school students from receiving Foreign Language and Area Studies Fellowships and that this contradicts the current competitive priorities for the program.

One commenter added that, if an institution forgoes applying for Foreign Language and Area Studies Fellowships due to the difference between the institutional payment and the actual tuition rate, then the cost-of-education allowance system will prevent access to the fellowship funds for students at high tuition institutions.

Two commenters disagreed with the Secretary's rationale for using other graduate fellowship programs, such as Jacob Javits and Patricia Roberts Harris, as models for the proposed Foreign Language and Area Studies Fellowships Program cost-of-education allowance system. The commenters stated that the provisions under those programs differ from the FLAS program in that those Federal fellowship programs provide the awards directly to students and do not require institutions to accept prospective fellowship recipients enrolled in high-cost programs. Those commenters also claimed that, since the permitted scope of study conducted under the Javits and Harris fellowships is broader, the institution is able to make up the difference between the institutional payment and the actual tuition from across many departments in the university. The commenters claimed that the FLAS program has a narrower focus and, therefore, will have a direct impact on only the departments with international components.

One commenter suggested phasing in the new cost-of-education allowance system over a three-year period to allow institutions that receive fellowship grants sufficient time to identify additional resources to supplement the institution's standard institutional payment.

Discussion: The Secretary appreciates the comments supporting the cost-of-education allowance. The Secretary believes this system provides for an equitable allocation of funds whereby each institution will receive the same amount per student. The change will enable the Department and grantee institutions to administer the FLAS program more effectively. The Secretary believes the allowance system substantially encourages cost-effectiveness and improves program accountability. In this era of diminishing budgetary resources, the Secretary believes it is important to encourage cost-containment and the award of the largest possible number of fellowships out of limited funds. Without this change, there is limited disincentive to prevent an institution from paying itself ''full'' tuition for a smaller number of awards.

Given that the majority of comments received from institutions supported this change, the Secretary disagrees with the commenters who suggested that institutions will not be able to support the FLAS program based on the cost-of-education allowance. The FLAS regulations allow unused portions of grants (such as institutional payments in excess of actual tuition costs) to be used by institutions to make additional fellowship awards.

The Secretary disagrees with the suggestion that the cost-of-education

allowance be phased in over three years. The administrative burden and delayed phase-in would defeat the benefits sought under the cost-of-education allowance system.

Changes: None.

What are the limitations on the use of funds for overseas fellowships? (§ 657.33(b)(1))

Comments: One commenter supported the provision allowing students at the beginning proficiency level to use a fellowship award abroad if an appropriate program in the same language is not available in the United States. The commenter stated that the revised restriction provides opportunities for more students to enroll in meaningful overseas language training programs.

One commenter suggested a revision to indicate that the advanced level of language proficiency is the preferred eligibility level for approval to use FLAS awards abroad and that students at the beginning or intermediate level may use a FLAS award abroad only if equivalent instruction is not available in the United States.

Discussion: The Secretary believes that the suggested revision unnecessarily restricts management flexibility for grantees, particularly in the field of less-commonly-taught languages. The Secretary disagrees with the commenter's view that only students with advanced language proficiency should be allowed to use FLAS awards abroad because beginning and intermediate level students can also benefit from language study in an immersion environment. The Secretary believes the language proficiency eligibility requirements and the conditions for approval to use a fellowship outside the United States are sufficient to maximize the positive impact of the FLAS program.

Changes: None.

—Other Changes. (§§ 657.21(c)(2), 657.21(i), and 657.33(b)(1))

Comments: None.

Discussion: In the ''Impact and evaluation'' criterion, the Secretary believes that requiring that the applicant's evaluation plan be comprehensive and objective at the time of the submission of the application emphasizes the importance of the applicant's participation in and ongoing commitment to improving program quality and efficiency.

Changes: The Secretary has changed ''that will be'' to ''that is'' in § 657.21(c)(2).

Comments: None.

Discussion: The Secretary did not receive comments regarding the awarding of additional points to applicants. However, the Secretary believes that the awarding of additional points should be done only when the Secretary establishes a competitive priority.

Changes: The Secretary has inserted the word ''competitive'' after the word ''more'' in the ''Priorities'' criterion (§ 657.21(i)).

Comments: None.

Discussion: Although the Secretary did not receive comments concerning whether fellowships for overseas programs were limited to foreign language studies, the Secretary believes that limiting the use of fellowships overseas for only foreign language programs at the specified proficiency levels reinforces the statutory purpose of providing specialized training opportunities to eligible students.

Changes: The Secretary has added the words ''foreign language'' after the word ''overseas'' in § 657.33(b)(1).

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the final regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 657

Colleges and universities, Education, International education, Reporting and recordkeeping requirements.

Dated: September 18, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number 84.015 National Resource Centers and Foreign Language and Area Studies Fellowships Programs.)

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 657 to read as follows:

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

Subpart B—How Does an Institution or a Student Submit an Application?

Subpart C—How Does the Secretary Select an Institution for an Allocation of Fellowships?

Subpart D—What Conditions Must Be Met By a Grantee and a Fellow?

Authority: 20 U.S.C. 1122, unless otherwise noted.

Subpart A—General

§ 657.1 What is the Foreign Language and Area Studies Fellowships Program?

Under the Foreign Language and Area Studies Fellowships Program, the Secretary awards fellowships, through

institutions of higher education, to students who are—

(a) Enrolled for graduate training in a Center or program approved by the Secretary under this part; and

(b) Undergoing performance-based modern foreign language training or training in a program for which performance-based modern foreign language instruction is being developed, in combination with area studies, international studies, or the international aspects of professional studies.

(Authority: 20 U.S.C. 1122)

§ 657.2 Who is eligible to receive an allocation of fellowships?

(a) The Secretary awards an allocation of fellowships to an institution of higher education or to a combination of institutions of higher education that—

(1) Operates a Center or program approved by the Secretary under this part;

(2) Teaches modern foreign languages under a program described in paragraph (b) of this section; and

(3) In combination with the teaching described in paragraph (a)(2) of this section—

(i) Provides instruction in the disciplines needed for a full understanding of the area, regions, or countries in which the foreign languages are commonly used; or

(ii) Conducts training and research in international studies, the international aspects of professional and other fields of study, or issues in world affairs that concern one or more countries.

(b) In teaching those modern foreign languages for which an allocation of fellowships is made available, the institution must be either using a program of performance-based training or developing a performance-based training program.

(c) The Secretary uses the criteria in § 657.21 both to approve Centers and programs for the purpose of receiving an allocation of fellowships and to evaluate applications for an allocation of fellowships.

(d) An institution does not need to receive a grant under the National Resource Center Program (34 CFR Part 656) to receive an allocation of fellowships under this part.

(Authority: 20 U.S.C. 1122)

§ 657.3 Who is eligible to receive a fellowship?

A student is eligible to receive a fellowship if the student—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States;

(b) Is accepted for enrollment or is enrolled—

(1) In an institution receiving an allocation of fellowships; and

(2) In a program that combines modern foreign language training with—

(i) Area or international studies; or

(ii) Research and training in the international aspects of professional and other fields of study;

(c) Shows potential for high academic achievement based on such indices as grade point average, class ranking, or similar measures that the institution may determine; and

(d) Is enrolled in a program of modern foreign language training in a language for which the institution has developed or is developing performance-based instruction.

(Authority: 20 U.S.C. 1122)

§ 657.4 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 655.

(b) The regulations in this Part 657.

(Authority: 20 U.S.C. 1122)

§ 657.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) *Center* means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational activities, including training in modern foreign languages and various academic disciplines, in its subject area.

(c) *Fellow* means a person who receives a fellowship under this part.

(d) *Fellowship* means the payment a fellow receives under this part.

(e) *Program* means a concentration of educational resources and activities in modern foreign language training and related studies.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does an Institution or a Student Submit an Application?

§ 657.10 What combined application may an institution submit?

An institution that wishes to apply for an allocation of fellowships and for a grant to operate a Center under 34 CFR Part 656 may submit a combined application for both grants to the Secretary.

(Authority: 20 U.S.C. 1122)

§ 657.11 How does a student apply for a fellowship?

(a) A student shall apply for a fellowship directly to an institution of higher education that has received an allocation of fellowships.

(b) The applicant shall provide sufficient information to enable the institution to determine whether he or she is eligible to receive a fellowship and whether he or she should be selected to receive a fellowship.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Select an Institution for an Allocation of Fellowships?

§ 657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?

(a) The Secretary evaluates an application for an allocation of fellowships on the basis of the quality of the applicant's Center or program. The applicant's Center or program is evaluated and approved under the criteria in § 657.21.

(b) In general, the Secretary awards up to 140 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 150 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

§ 657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?

(a) *Foreign language and area studies fellowships awardee selection procedures.* (15 points) The Secretary reviews each application to determine whether the selection plan is of high quality, showing how awards will be advertised, how students apply, what selection criteria are used, who selects the fellows, when each step will take place, and how the process will result in awards being made to correspond to any announced priorities.

(b) *Quality of staff resources.* (15 points) The Secretary reviews each application to determine—

(1) The extent to which teaching faculty and other staff are qualified for the current and proposed activities and training programs, are provided professional development opportunities (including overseas experience), and participate in teaching, supervising, and advising students (5 points);

(2) The adequacy of applicant staffing and oversight arrangements and the extent to which faculty from a variety of departments, professional schools, and the library are involved (5 points); and

(3) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that

have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (5 points).

(c) *Impact and evaluation.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant's activities and training programs have contributed to an improved supply of specialists on the program's subject as shown through indices such as graduate enrollments and placement data; and the extent to which the applicant supplies a clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (15 points); and

(2) The extent to which the applicant provides an evaluation plan that is comprehensive and objective and that will produce quantifiable, outcome-measure-oriented data; and the extent to which recent evaluations have been used to improve the applicant's program (5 points).

(d) *Commitment to the subject area on which the applicant or program focuses.* (10 points) The Secretary reviews each application to determine—

(1) The extent to which the institution provides financial and other support to the operation of the applicant, teaching staff for the applicant's subject area, library resources, and linkages with institutions abroad (5 points); and

(2) The extent to which the institution provides financial support to graduate students in fields related to the applicant's teaching program (5 points).

(e) *Strength of library.* (15 points) The Secretary reviews each application to determine—

(1) The strength of the institution's library holdings (both print and non-print, English and foreign language) for graduate students; and the extent to which the institution provides financial support for the acquisition of library materials and for library staff in the subject area of the applicant (10 points); and

(2) The extent to which research materials at other institutions are available to students through cooperative arrangements with other libraries or on-line databases (5 points).

(f) *Quality of the applicant's non-language instructional program.* (25 points) The Secretary reviews each application to determine—

(1) The quality and extent of the applicant's course offerings in a variety of disciplines, including the extent to which courses in the applicant's subject matter are available in the institution's professional schools (10 points);

(2) The extent to which the applicant offers depth of specialized course coverage in one or more disciplines on the applicant's subject area (5 points);

(3) The extent to which the institution employs a sufficient number of teaching faculty to enable the applicant to carry out its purposes and the extent to which instructional assistants are provided with pedagogy training (5 points); and

(4) The extent to which interdisciplinary courses are offered for graduate students (5 points).

(g) *Quality of the applicant's language instructional program.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant provides instruction in the languages of the applicant's subject area and the extent to which students enroll in the study of the languages of the subject area through programs or instruction offered by the applicant or other providers (5 points);

(2) The extent to which the applicant provides three or more levels of language training and the extent to which courses in disciplines other than language, linguistics, and literature are offered in appropriate foreign languages (5 points);

(3) Whether sufficient numbers of language faculty are available to teach the languages and levels of instruction described in the application and the extent to which language teaching staff (including faculty and instructional assistants) have been exposed to current language pedagogy training appropriate for performance-based teaching (5 points); and

(4) The quality of the language program as measured by the performance-based instruction being used or developed, the adequacy of resources for language teaching and practice, and language proficiency requirements (5 points).

(h) *Quality of curriculum design.* (20 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant's curriculum provides training options for graduate students from a variety of disciplines and professional fields and the extent to which these programs and their requirements (including language requirements) are appropriate for an applicant in this subject area and result in graduate training programs of high quality (10 points);

(2) The extent to which the applicant provides academic and career advising services for students (5 points); and

(3) The extent to which the applicant has established formal arrangements for students to conduct research or study abroad and the extent to which these arrangements are used; and the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs (5 points).

(i) *Priorities.* (10 points) If one or more competitive priorities have been established under § 657.22, the Secretary reviews each application for information that shows the extent to which the Center or program meets these priorities.

(Approved by the Office of Management and Budget under control number 1840–0068)

(Authority: 20 U.S.C. 1122)

§ 657.22 What priorities may the Secretary establish?

(a) The Secretary may establish one or more of the following priorities for the allocation of fellowships:

(1) Specific world areas, or countries, such as East Asia or Mexico.

(2) Languages, such as Chinese.

(3) Levels of language offerings.

(4) Academic disciplines, such as linguistics or sociology.

(5) Professional studies, such as business, law, or education;

(6) Particular subjects, such as population growth and planning, or international trade and business.

(7) A combination of any of these categories.

(b) The Secretary announces any priorities in the application notice published in the Federal Register.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met by a Grantee and a Fellow?

§ 657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?

(a) *Duration.* An institution may award a fellowship to a student for—

(1) One academic year; or

(2) One summer session if the summer session provides the fellow with the equivalent of one academic year of modern foreign language study.

(b) *Vacancies.* If a fellow vacates a fellowship before the end of an award period, the institution to which the fellowship is allocated may reaward the balance of the fellowship to another student if—

(1) The student meets the eligibility requirements in § 657.3; and

(2) The remaining fellowship period comprises at least one full academic

quarter, semester, trimester, or summer session as described in paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1122)

§ 657.31 What is the amount of a fellowship?

(a)(1) An institution shall award a stipend to fellowship recipients.

(2) Each fellowship includes an institutional payment and a subsistence allowance to be determined by the Secretary.

(3) If the institutional payment determined by the Secretary is greater than the tuition and fees charged by the institution, the institutional payment portion of the fellowship is limited to actual tuition and fees. The difference between actual tuition and fees and the Secretary's institutional payment shall be used to fund additional fellowships to the extent that funds are available for a full subsistence allowance.

(4) If permitted by the Secretary, the fellowship may include an allowance for travel and an allowance for dependents.

(b) The Secretary announces in an application notice published in the Federal Register—

(1) The amounts of the subsistence allowance and the institutional payment for an academic year and the subsistence allowance and the institutional payment for a summer session;

(2) Whether travel and dependents' allowances will be permitted; and

(3) The amount of travel and dependents' allowances.

(Authority: 20 U.S.C. 1122)

§ 657.32 What is the payment procedure for fellowships?

(a) An institution shall pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship.

(b) An institution shall make a payment only to a fellow who is in good standing and is making satisfactory progress.

(c) The institution shall make appropriate adjustments of any overpayment or underpayment to a fellow.

(d) Funds not used by one recipient for reasons of withdrawal are to be used for alternate recipients to the extent that funds are available for a full subsistence allowance.

(Authority: 20 U.S.C. 1122)

§ 657.33 What are the limitations on the use of funds for overseas fellowships?

(a) Before awarding a fellowship for use outside the United States, an institution shall obtain the approval of the Secretary.

(b) The Secretary may approve the use of a fellowship outside the United States if the student is—

(1) Enrolled in an overseas foreign language program approved by the institution at which the student is enrolled in the United States for study at an intermediate or advanced level or at the beginning level if appropriate equivalent instruction is not available in the United States; or

(2) Engaged during the academic year in research that cannot be done effectively in the United States and is affiliated with an institution of higher education or other appropriate organization in the host country.

(Authority: 20 U.S.C. 1122)

§ 657.34 Under what circumstances must an institution terminate a fellowship?

An institution shall terminate a fellowship if—

(a) The fellow is not making satisfactory progress, is no longer enrolled, or is no longer in good standing at the institution; or

(b) The fellow fails to follow the course of study, including modern foreign language study, for which he or she applied, unless a revised course of study is otherwise approvable under this part.

(Authority: 20 U.S.C. 1122)

[FR Doc. 96–24463 Filed 9–23–96; 8:45 am]

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Federal Register

Tuesday
September 24, 1996

Part VII

Department of Housing and Urban Development

24 CFR Parts 26, 28, 30, 81, 200, 950, 965, 3282, and 3500

Streamlining Hearing Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 26, 28, 30, 81, 200, 950, 965, 3282, and 3500

[Docket No. FR–4022–F–02]

RIN 2501–AC19

Streamlining Hearing Procedures;

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: In response to the President's regulatory reform initiatives, this final rule streamlines and consolidates many of HUD's regulations containing hearing procedures. This rule also makes several substantive changes to these regulations in order to improve the hearing process and to make the regulations more closely follow applicable statutes. This rule makes the regulations easier for the public to use and understand. Finally, this rule makes appropriate adjustments in stated penalty amounts pursuant to the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: October 24, 1996. Increases in civil money penalty amounts, pursuant to the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note; Pub. L. 104–134, approved April 26, 1996; 110 Stat. 1321–358) apply to civil money penalty violations that occur on or after the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Emmett N. Roden, Assistant General Counsel for Administrative Proceedings, Office of General Counsel, Department of Housing and Urban Development, Room 10251, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 708–2350. (This is not a toll-free number.) Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On April 23, 1996 (61 FR 18026), HUD published a proposed rule that would streamline and consolidate many of HUD's regulations containing hearing procedures. HUD published this rule in response to President Clinton's March 4, 1995 memorandum to all Federal departments and agencies regarding regulatory reinvention. In the April 23, 1996 proposed rule, HUD proposed to consolidate as many of HUD's hearing procedures as possible into one part, in order to make the procedures easier to use and understand, and thereby eliminate approximately 20 pages of unnecessary regulations from the Code of Federal Regulations (CFR). Today's final rule adopts the proposals in the April 23, 1996 proposed rule, with several changes as described in section I.D of this preamble.

A. Hearings According to the Administrative Procedure Act

In this final rule, HUD amends 24 CFR part 26 so that it contains two sets of hearing regulations. The first set of regulations, in part 26 subpart A, contains all the procedures that previously appeared in part 26. These procedures apply in HUD proceedings before a hearing officer, including administrative sanction hearings under part 24 and hearings with respect to actions by the Mortgagee Review Board under part 25. This final rule does not change the substance of any of these provisions, but it sets them apart so that they all appear within a new subpart A of part 26.

This final rule adds the second set of regulations to form a new subpart B of part 26. The new subpart B contains a relatively uniform set of hearing procedures for formal hearings pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA). The hearing procedures in subpart B apply to hearings under the Program Fraud Civil Remedies Act of 1986, to hearings in which HUD seeks civil money penalties, to hearings pursuant to the Interstate Land Sales Full Disclosure Act, and to other hearings conducted pursuant to the APA.

In addition to consolidating these hearing procedures into one part and making them uniform, this final rule makes a number of changes to streamline pleadings and reduce administrative overhead. This final rule contains specific time limits to ensure rapid disposition of cases (see, e.g., §§ 26.39, 26.42, 26.44, 26.50). This final rule also clarifies that parties must seek Secretarial review in order to exhaust their administrative remedies before seeking judicial review, thereby addressing the Supreme Court's decision in *Darby* v. *Cisneros*, 113 S.Ct. 2539 (1993).

B. Program Fraud Civil Remedies Act of 1986

In this final rule, HUD also streamlines the provisions in part 28 regarding the Program Fraud Civil Remedies Act of 1986 (PFCRA) (31 U.S.C. 3801) by removing the hearing procedures, and by retaining in their place a cross-reference to the uniform hearing procedures in part 26 subpart B. This final rule also streamlines the substantive provisions of the PFCRA regulations by eliminating unnecessary language and by clarifying the remaining language, making these regulations easier to use and understand. This final rule also shortens the decision process by removing the reconsideration of initial determinations.

C. Civil Money Penalties

This final rule also streamlines the regulations in part 30 regarding civil money penalties. This rule removes the hearing procedures from part 30, maintaining a cross-reference to the uniform hearing procedures in part 26 subpart B. In addition, this rule eliminates three of the civil money penalty panels, replacing them with certain appropriate HUD officials in their authority to initiate actions for civil money penalties.

This rule also revises and clarifies the list of violations for Government National Mortgage Association (GNMA) issuers and custodians, revises the list of violations applicable to mortgagees and lenders to include the misuse of loan proceeds and the failure to comply with settlement agreements with HUD, and expands the violation for failure to service Section 235 mortgages to include other housing programs. Finally, this rule updates the regulations to include penalties that were enacted in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992; 106 Stat. 3672).

D. This Final Rule

The deadline for the receipt of public comments on the April 23, 1996 proposed rule (61 FR 18026) was June 24, 1996. To date, HUD has received no public comments. Therefore, based on HUD's review of the proposed rule, today's final rule makes only the following changes to the provisions of the proposed rule:

1. This final rule clarifies the definitions of *''Complaint''* and *''Response''* in § 26.28, as well as the procedures in § 26.37, so that the public can more easily understand the procedures under which an action is initiated.

2. This final rule changes certain time periods to make them more reasonable and more closely aligned with other rules of procedure. (See, e.g., § 26.34(c) of this final rule.)

3. This final rule removes references to the discovery provisions of the Federal Rules of Civil Procedure that appeared in the proposed rule, in favor of a simple reference to the general availability of discovery (see § 26.41 of this final rule). Any discovery issues

that may arise between the parties will be resolved by the administrative law judge on a case-by-case basis.

4. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Pub. L. 101–410, approved October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note; Pub. L. 104–134, approved April 26, 1996; 110 Stat. 1321–358), each Federal agency is required to issue regulations adjusting for inflation the maximum civil money penalties that can be imposed pursuant to such agency's statutes. The first such adjustment is required within 180 days after April 26, 1996, which is the date of enactment of the 1996 Act. This final rule sets forth the adjusted penalty amounts applicable to 24 CFR parts 28, 30, 81, 3282, and 3500.

5. Finally, this rule further streamlines the hearing procedures, so that only those provisions necessary to conduct orderly and fair hearings are included in the regulations.

II. Findings and Certifications

National Environmental Policy Act

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of HUD regulations, the policies and procedures contained in this final rule relate only to hearing procedures and administrative decisions, which do not constitute development decisions and do not affect the physical condition of a project area or building site. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities. This rule implements statutory authority intended to protect HUD's programs from abusive practices, but it will have no adverse or disproportionate economic impact on small businesses.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns. Therefore, the rule is not subject to review under the Order.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; approved March 22, 1995) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 26

Administrative practice and procedure, Claims, Fraud, Grant programs—housing and community development, Loan programs—housing and community development, Mortgages, Penalties.

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgages, Penalties.

24 CFR Part 81

Accounting, Federal Reserve System, Mortgagees, Reporting and recordkeeping requirements, Securities.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

Accordingly, parts 26, 28, 30, 81, 200, 950, 965, 3282, and 3500 of title 24 of the Code of Federal Regulations are amended as follows:

PART 26—HEARING PROCEDURES

1. The part heading for part 26 is revised to read as set forth above.

2. The authority citation for 24 CFR part 26 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

3. The heading of subpart A is revised to read, ''Subpart A—Hearings Before Hearing Officers''.

Subparts B, C, D, E, F, and G—[Redesignated]

4. The headings for subparts B, C, D, E, F, and G are redesignated as undesignated center headings; and §§ 26.2 through 26.26 of subparts B, C, D, E, F, and G are redesignated as §§ 26.2 through 26.26 of subpart A.

5. A new subpart B is added to read as follows:

Subpart B—Hearings Pursuant to the Administrative Procedure Act

General

Prehearing Procedures

Hearings

Subpart B—Hearings Pursuant to the Administrative Procedure Act

General

§ 26.27 Purpose and scope.

Unless otherwise specified in this title, the rules in this subpart B of this part apply to hearings that HUD is required by statute to conduct pursuant to the Administrative Procedure Act (5 U.S.C. 554 *et seq.*).

§ 26.28 Definitions.

The following definitions apply to subpart B of this part:

Chief Docket Clerk means the Chief Docket Clerk of the Office of Administrative Law Judges at the following address: 409 3rd Street, S.W., Suite 320, Washington, D.C. 20024.

Complaint means the notice from HUD alleging violations of a HUD statute and/or regulation, citing the legal authority upon which it is issued, stating the relief HUD seeks, and informing a respondent of his or her right to submit a response to a designated office and to request an opportunity for a hearing before an administrative law judge.

Response means the written response to a complaint, admitting or denying the allegations in the complaint and setting forth any affirmative defense and/or any mitigating factors or extenuating circumstances. The response shall be submitted to the Office of General Counsel that initiates the complaint or to such other office as may be designated in the complaint. A response is deemed a request for a hearing.

§ 26.29 Powers and duties of the Administrative Law Judge (ALJ).

The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and ensure that a record of the proceeding is made. The ALJ is authorized to:

(a) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(b) Continue or recess the hearing in whole or in part for a reasonable period of time;

(c) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(d) Administer oaths and affirmations;

(e) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(f) Rule on motions and other procedural matters;

(g) Regulate the scope and timing of discovery;

(h) Regulate the course of the hearing and the conduct of representatives and parties;

(i) Examine witnesses;

(j) Receive, rule on, exclude, or limit evidence;

(k) Upon motion of a party, take official notice of facts;

(l) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(m) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(n) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under subpart B of this part.

§ 26.30 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 26.31 Disqualification of ALJ.

(a) An ALJ in a particular case may disqualify himself or herself.

(b) A party may file with the ALJ a motion for the ALJ's disqualification. The motion shall be accompanied by an affidavit alleging the grounds for disqualification.

(c) Upon the filing of a motion and affidavit, the ALJ shall proceed no further in the case until the matter of disqualification is resolved.

§ 26.32 Parties to the hearing.

(a) *General.* The parties to the hearing shall be the respondent and HUD.

(b) *Rights of parties.* Except as otherwise limited by subpart B of this part, all parties may:

(1) Be accompanied, represented, and advised by a representative;

(2) Participate in any conference held by the ALJ;

(3) Conduct discovery;

(4) Agree to stipulations of fact or law, which shall be made part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present oral arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 26.33 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding shall, in that proceeding or any factually related proceeding under subpart B of this part, participate or advise in the decision of the administrative law judge, except as a witness or counsel during the proceeding, or in its appellate review.

§ 26.34 Time computations.

(a) In computing any period of time under subpart B of this part, the time period begins the day following the act, event, or default, and includes the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which case the time period includes the next business day. When the prescribed time period is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Entry of orders.* In computing any time period involving the date of the issuance of an order or decision by an administrative law judge, the date of

issuance is the date the order or decision is served by the Chief Docket Clerk.

(c) *Service by mail.* If a document is served by mail, 3 days shall be added to the time permitted for a response.

§ 26.35 Service and filing.

(a) *Filing.* All documents shall be filed with the Chief Docket Clerk, at the address listed in § 26.28. Filing may be by first class mail, delivery, facsimile transmission, or electronic means; however, the ALJ may place appropriate limits on filing by facsimile transmission or electronic means. All documents shall clearly designate the docket number and title of the proceeding.

(b) *Service.* One copy of all documents filed with the Chief Docket Clerk shall be served upon each party by the persons filing them and shall be accompanied by a certificate of service stating how and when such service has been made. Service may be made by delivery, first class mail, facsimile transmission, or electronic means; however, the ALJ may place appropriate limits on service by facsimile transmission or electronic means. Documents shall be served upon a party's address of residence or principal place of business, or, if the party is represented by counsel, upon counsel of record at the address of counsel. Service is complete when handed to the person or delivered to the person's office or residence and deposited in a conspicuous place. If service is by first-class mail, facsimile transmission, or electronic means, service is complete upon deposit in the mail or upon electronic transmission.

§ 26.36 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for failing to comply with an order, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) *Failure to comply with an order.* When a party fails to comply with an order, including an order compelling discovery, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, regard each matter about which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; or

(4) Strike any part of the pleadings or other submissions of the party failing to comply with the order.

(d) If a party fails to prosecute or defend an action brought under subpart B of this part, the ALJ may dismiss the action or may issue an initial decision against the respondent.

(e) The ALJ may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion.

Prehearing Procedures

§ 26.37 Commencement of action.

An action under subpart B of this part shall commence with the Government's filing of a complaint, together with the response thereto, as those terms are defined in § 26.28, with the Chief Docket Clerk. If the respondent fails to submit a response to the Office of General Counsel or such other office as designated in the complaint, then the Government may file a motion for a default judgment, together with a copy of the complaint, in accordance with § 26.39.

§ 26.38 Motions.

(a) *General.* All motions shall state the specific relief requested and the basis therefor and, except during a conference or the hearing, shall be in writing. Written motions shall be filed and served in accordance with § 26.35.

(b) *Response to motions.* Unless otherwise ordered by the ALJ, a response to a written motion may be filed within 7 days after service of the motion. A party failing to respond timely to a motion shall be deemed to have waived any objection to the granting of the motion.

§ 26.39 Default.

(a) *General.* The respondent may be found in default, upon motion, for failure to file a timely response to the Government's complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 7 days from such service to respond to the motion.

(b) *Default order.* The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.

(c) *Effect of default.* A default shall constitute an admission of all facts alleged in the Government's complaint and a waiver of respondent's right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

§ 26.40 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may consider the following at a prehearing conference:

(1) Simplification of the issues;

(2) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents;

(3) Submission of the case on briefs in lieu of an oral hearing;

(4) Limitation of the number of witnesses;

(5) The exchange of witness lists and of proposed exhibits;

(6) Discovery;

(7) The time and place for the hearing; and

(8) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

§ 26.41 Discovery.

(a) Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the adjudication, whether it relates to the case or defense of the party seeking discovery or to the case or defense of any other party. It is not grounds for objection that the information sought will be inadmissible at the hearing, if such information appears reasonably calculated to lead to the discovery of admissible evidence.

(b) Discovery in Program Fraud Civil Remedies actions (24 CFR part 28), unless agreed to by the parties, shall be available only as ordered by the ALJ. The party opposing discovery shall have 10 days to respond to a motion for discovery. The ALJ shall grant a motion for discovery only if he or she finds that discovery is necessary for the expeditious, fair, and reasonable consideration of the issues, is not unduly costly or burdensome, will not unduly delay the proceeding, and does not seek privileged information. The ALJ may grant discovery subject to a protective order under § 26.43. The request for approval sent to the Attorney General from the General Counsel or designee, as described in § 28.20 of this title, is not discoverable under any circumstances.

(c) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying. Nothing contained herein shall be interpreted to require the creation of a document.

(2) Requests for admissions.

(3) Written interrogatories. Such interrogatories shall be limited in number to 25, unless otherwise ordered by the ALJ.

(4) Depositions.

(d) *Motions to compel.* A party may file a motion to compel discovery. The motion shall describe the information sought, cite the opposing party's objection, and provide arguments supporting the motion. The opposing party may file a response to the motion, including a request for a protective order. The ALJ may issue an order compelling a response, issue sanctions pursuant to § 26.36, or issue a protective order. For purposes of paragraph (d) of this section, an evasive or incomplete answer to a request for discovery is treated as a failure to answer.

(e) Each party shall bear its own costs of discovery.

§ 26.42 Subpoenas.

(a) *General.* Upon written request of a party, the ALJ may issue a subpoena requiring the attendance of a witness at a deposition or hearing, and/or the production of documents. The request shall specify any documents to be produced and shall list the names and addresses of the witnesses.

(b) *Time of request.* A request for a subpoena in aid of discovery shall be filed in time to permit the conclusion of discovery 15 days before the date fixed for the hearing. A request for a subpoena to testify at the hearing shall be filed at least 3 days prior to the hearing, unless otherwise allowed by the ALJ for good cause shown.

(c) *Content.* The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(d) *Service and fees.* Subpoenas shall be served, and fees and costs paid to subpoenaed witnesses, in accordance with Rule 45(b)(1) of the Federal Rules of Civil Procedure.

(e) *Motion to quash.* The individual to whom the subpoena is directed or a party may file a motion to quash the subpoena within 10 days after service, or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 26.43 Protective order.

(a) A party, a prospective witness, or a deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may issue any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, as provided in Rule 26(c) of the Federal Rules of Civil Procedure.

Hearings

§ 26.44 General.

(a) *Time of hearing.* The hearing shall commence not later than 90 days following the Government's filing of the complaint and response under § 26.37, unless the time is extended for good cause. The ALJ shall provide written notice to all parties of the reasons for any extension of time.

(b) *Location of hearing.* The hearing shall be held where the respondent resides or transacts business, or in such other place as may be agreed upon by the parties and the ALJ. Hearings for Program Fraud Civil Remedies Act cases shall be located in accordance with 31 U.S.C. 3803(g)(4).

(c) *Notice of hearing.* The ALJ shall issue a notice of hearing to all parties specifying the time and location of the hearing, the matters of fact and law to be heard, the legal authority under which the hearing is to be held, a description of the procedures for the conduct of the hearing, and such other matters as the ALJ determines to be appropriate.

(d) *Limitations for Program Fraud Civil Remedies Act cases.* The notice of hearing must be served upon the respondent within 6 years after the date on which the claim or statement is made. If the respondent fails to file a timely response to the Government's complaint, service of a default judgment under § 26.39 shall be regarded as a notice of hearing for purposes of this section. The statute of limitations may be waived by agreement of the parties.

(e) *Burden and standard of proof.* HUD shall prove the respondent's liability and any aggravating factors by a preponderance of the evidence. Respondent shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(f) *Public hearings.* Unless otherwise ordered by the ALJ for good cause shown, the hearing shall be open to the public.

§ 26.45 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. In order to be admissible, any written statement must be provided to all other parties along with the last known address of the witness, in a manner that allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing.

§ 26.46 Evidence.

The ALJ shall admit any relevant oral or documentary evidence that is not privileged. The ALJ may, however, exclude evidence if its probative value is substantially outweighed by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 26.47 The record.

The hearing will be recorded and transcribed. The transcript of testimony, exhibits, and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Secretary or designee.

§ 26.48 Posthearing briefs.

Posthearing briefs shall be filed only upon order by the ALJ.

§ 26.49 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the relief granted.

(b) The ALJ shall serve the initial decision on all parties within 60 days after either the close of the record or the expiration of time permitted for submission of posthearing briefs, whichever is later. The initial decision shall include a statement of each party's right to file a request for Secretarial review. The ALJ may extend the 60-day period for serving the initial decision in writing for good cause.

(c) If no appeal is timely filed with the Secretary or designee, the initial decision shall become the final agency action.

§ 26.50 Appeal to the Secretary.

(a) Except as otherwise set forth in paragraph (b) of this section, either party may file with the Secretary a petition for review within 30 days after the ALJ issues an initial decision. The Secretary or designee may extend the 30-day period for good cause. If the Secretary or designee does not act upon the petition for review within 90 days

of its service, then the initial decision shall become final.

(b) Appeals of Program Fraud Civil Remedies Act decisions (24 CFR part 28). Only the respondent may file a petition for Secretarial review. The petition must be filed within 30 days after the ALJ issues the initial decision. The Secretary or designee may extend the 30-day period for good cause. If the Secretary or designee does not act upon the petition for review within 30 days of its service, then the initial decision shall become final.

(c) Brief in support of petition. The petition for review shall be accompanied by a written brief, not to exceed 10 pages, specifying exceptions to the initial decision and reasons supporting the exceptions.

(d) Service. The party submitting the petition for review shall serve a copy of the petition and brief in support of the petition on the other parties and on the Chief Docket Clerk.

(e) Forwarding of the record. Upon request by the Office of the Secretary, the ALJ shall forward the record of the proceeding to the Secretary or designee.

(f) Brief in opposition. Any opposing party may file a brief opposing review, not to exceed 10 pages, within 20 days of receiving the petition for review and accompanying brief. The brief in opposition shall be served on all parties.

(g) Additional briefs. If the petition is granted, then the Secretary or designee may order the filing of additional briefs.

(h) There is no right to appear personally before the Secretary or designee.

(i) There is no right to appeal any interlocutory ruling by the ALJ.

(j) In reviewing the initial decision, the Secretary or designee shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(k) The Secretary or designee shall consider only evidence contained in the record forwarded by the ALJ. However, if any party demonstrates to the satisfaction of the Secretary or designee that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Secretary or designee shall remand the matter to the ALJ for consideration of such additional evidence.

(l) The prohibitions of ex parte contacts in § 26.30 shall apply to contacts with the Secretary or designee.

(m) The Secretary or designee may affirm, reduce, reverse, compromise, remand, or settle any relief granted in the initial decision. The Secretary or designee shall consider, and include in any final determination, such factors as may be set forth in applicable statutes or regulations.

(n) The Secretary or designee shall promptly serve each party to the appeal with a copy of his or her decision and a statement describing the right to seek judicial review.

(o) Judicial review. A party must generally file a petition for judicial review within 20 days of service of the Secretary's determination, or the Secretary's determination shall become final and not subject to judicial review. In Program Fraud Civil Remedies Act matters (24 CFR part 28), the respondent shall have 60 days from the date that the determination is sent to the respondent in which to file a petition. See also § 26.52.

§ 26.51 Exhaustion of administrative remedies.

In order to fulfill the requirement of exhausting administrative remedies, a party must seek Secretarial review under § 26.50 prior to seeking judicial review of any initial decision issued under subpart B of this part.

§ 26.52 Judicial review.

Judicial review shall be in accordance with applicable statutory procedures and the procedures of the appropriate Federal court. The Government may not seek judicial review of an adverse determination of a Program Fraud Civil Remedies Act matter.

§ 26.53 Collection of civil penalties and assessments.

Collection of civil penalties and assessments shall be in accordance with applicable statutory provisions.

§ 26.54 Right to administrative offset.

The amount of any penalty or assessment that has become final under § 26.49, or for which a judgment has been entered after action under §§ 26.52 or 26.53, or agreed upon in a compromise or settlement among the parties, may be collected by administrative offset under 31 U.S.C. 3716 or other applicable law. In Program Fraud Civil Remedies Act matters, an administrative offset may not be collected against a refund of an overpayment of Federal taxes then or later owing by the United States to the respondent.

6–8. Part 28 is revised to read as follows:

PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Sec.
28.1 Purpose.
28.5 Definitions.
28.10 Basis for civil penalties and assessments.
28.15 Investigation.
28.20 Request for approval by the Department of Justice.
28.25 Complaint.
28.30 Response.
28.35 Disclosure of documents.
28.40 Hearings.
28.45 Settlements.

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801; 42 U.S.C. 3535(d).

§ 28.1 Purpose.

This part:

(a) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Federal authorities or to their agents; and

(b) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. Hearings under this part shall be conducted pursuant to 24 CFR part 26, subpart B.

§ 28.5 Definitions.

The terms *ALJ* and *HUD* are defined in 24 CFR part 5.

Benefit means anything of value, including, but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan insurance or guarantee.

Claim means any request, demand, or submission:

(1) Made to HUD for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from HUD, or to a party to a contract with HUD, for property or services provided by the U.S. Government, purchased with Government funds, or for which the Government will reimburse the recipient or party; or

(3) Made to HUD that has the effect of decreasing an obligation to pay or account for property, services, or money.

Knows or has reason to know means that a person has actual knowledge that a claim or statement is false, fictitious, or fraudulent; acts in deliberate ignorance of the truth or falsity of the claim or statement; or acts in reckless disregard of the truth or falsity of the claim or statement.

Person means any individual, partnership, corporation, association, private organization, or entity.

Respondent means any person alleged to be liable for a civil penalty or assessment under § 28.25.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(1) With respect to a claim, to obtain approval or payment of a claim, or relating to eligibility to make a claim; or

(2) With respect to or relating to eligibility for a contract, bid, or proposal for a contract with; or a grant or cooperative agreement, loan, or benefit from; HUD, any State, any political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or the grant or cooperative agreement, loan, or benefit, or if the Government will reimburse the State, political subdivision, or party for any portion of the money or property under the contract or for the grant or cooperative agreement, loan, or benefit.

§ 28.10 Basis for civil penalties and assessments.

(a) *Claims.* (1) A civil penalty of not more than $5,500 may be imposed upon a person who makes a claim that the person knows or has reason to know:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by a written statement that either contains a material fact that is false, fictitious, or fraudulent; or omits a material fact that the person has a duty to include and is false, fictitious, or fraudulent as a result of the omission; or

(iii) Is for payment for the provision of property or services that the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to HUD, to a recipient, or to a party when the claim actually is made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of HUD, the recipient, or the party.

(4) Each claim for property, services, or money is subject to a civil penalty without regard to whether the property, services, or money actually is delivered or paid.

(5) Liability under this part shall not lie if the amount of money or value of property or services claimed exceeds $150,000 as to each claim that a person submits. For purposes of paragraph (a) of this section, a group of claims submitted simultaneously as part of a single transaction shall be considered a single claim.

(6) If the Government has made any payment, transferred property, or provided services on a claim, then the Government may assess a person found liable up to twice the amount of the claim or portion of the claim that is determined to be in violation of paragraph (a)(1) of this section.

(b) *Statements.* (1) A civil penalty of up to $5,500 may be imposed upon a person who makes a written statement that:

(i) The person knows, or has reason to know, contains a material fact that is false, fictitious, or fraudulent; or omits a material fact that the person has a duty to include and is false, fictitious, or fraudulent because of that omission; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to HUD when the statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of HUD.

(c) *Limit on liability.* If the claim or statement relates to low-income housing benefits or housing benefits for the elderly or handicapped, then a person may be held liable only if he or she has made the claim or statement in the course of applying for such benefits, with respect to his or her eligibility, or family's eligibility, to receive such benefits. For purposes of paragraph (c) of this section, ''*housing benefits*'' means any instance wherein funds administered by the Secretary directly or indirectly permit low-income families or elderly or handicapped persons to reside in housing that otherwise would not be available to them.

(d) *Specific intent.* No proof of specific intent to defraud is required to establish liability under this section.

(e) *Joint and several liability.* A civil penalty or assessment may be imposed jointly and severally if more than one person is determined to be liable.

§ 28.15 Investigation.

(a) General. HUD may initiate a Program Fraud Civil Remedies Act (31 U.S.C. 3801) case against a respondent only upon an investigation by the Inspector General or his or her designee.

(b) Subpoena. Pursuant to 31 U.S.C. 3804(a), the Inspector General or designee may require by subpoena the production of records and other documents. The subpoena shall state the authority under which it is issued, identify the records sought, and name the person designated to receive the records. The recipient of the subpoena shall provide a certification that the documents sought have been produced, that the documents are not available and the reasons they are not available, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(c) Investigation report. If the Inspector General or designee concludes that an action under the Program Fraud Civil Remedies Act may be warranted, her or she shall submit a report containing the findings and conclusions of the investigation to the General Counsel or his or her designee.

(d) The Inspector General may refer allegations directly to the Department of Justice for suit under the False Claims Act (31 U.S.C. 3730) or for other civil relief, or may postpone submitting a report to the General Counsel to avoid interference with a criminal investigation or prosecution. The Inspector General shall report violations of criminal law to the Attorney General.

§ 28.20 Request for approval by the Department of Justice.

(a) If the General Counsel or designee determines that the investigation report supports an action under this part, he or she must submit a written request to the Department of Justice for approval to issue a notice under § 28.25.

(b) The request shall include a description of the claims or statements at issue; the evidence supporting the notice; an estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 28.10; any exculpatory or mitigating circumstances that may relate to the claims or statements; and a statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 28.25 Complaint.

(a) *General.* Upon obtaining approval from the Department of Justice, the General Counsel or designee may issue a complaint to the respondent. The complaint shall be sent by certified mail, return receipt requested, or shall be personally served.

(b) The complaint shall include:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the claims or statements at issue, and the reasons why liability arises from those claims or statements;

(2) The amount of penalties and assessments for which the respondent may be held liable;

(3) That the respondent may request a hearing by submitting a written response to the complaint;

(4) The address to which a response must be sent; and

(5) That failure to submit an answer within 30 days of receipt of the complaint may result in the imposition of the maximum amount of penalties and assessments sought without right of appeal.

(c) A copy of this part 28 and of 24 CFR part 26, subpart B shall be included with the complaint.

§ 28.30 Response.

(a) The respondent may submit a written response to HUD within 30 days of service of the complaint. The response shall be deemed to be a request for hearing. The response should include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the penalties and assessments should be less than the amount set forth in the complaint; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Chief Docket Clerk, Office of Administrative Law Judges, in accordance with § 26.37 of this title. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with § 26.39 of this title.

§ 28.35 Disclosure of documents.

Upon receipt of a complaint, the respondent may, upon written request to the General Counsel or designee, review any relevant and material nonprivileged documents, including any exculpatory documents, that relate to the allegations set out in the complaint. Exculpatory information that is contained in a privileged document must be disclosed.

§ 28.40 Hearings.

(a) *General.* Hearings under this part shall be conducted in accordance with the procedures in 24 CFR part 26, subpart B.

(b) *Factors to consider in determining amount of penalties and assessments.* In determining an appropriate amount of civil penalties and assessments, the administrative law judge (ALJ) and, upon appeal, the Secretary shall consider and state in their opinions any mitigating or aggravating circumstances. Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily double damages and a significant civil penalty should be imposed. The ALJ and the Secretary shall consider the following factors in determining the amount of penalties and assessments to be imposed:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;

(6) The relationship of the civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the respondent and others from engaging in the same or similar misconduct; and

(17) Any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

(c) *Stays ordered by the Department of Justice.* If at any time the Attorney General of the United States or an Assistant Attorney General designated by the Attorney General notifies the Secretary in writing that continuation of HUD's case may adversely affect any pending or potential criminal or civil action related to the claim or statement at issue, the ALJ or the Secretary shall stay the process immediately. The case may be resumed only upon receipt of the written authorization of the Attorney General.

§ 28.45 Settlements.

(a) HUD and the respondent may enter into a settlement agreement at any time prior to the issuing of a notice of final determination under § 26.50 of this title.

(b) Failure of the respondent to comply with a settlement agreement shall be sufficient cause for resuming an action under this part, or for any other judicial or administrative action.

9–11. Part 30 is revised to read as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

Subpart A—General

Subpart B—Violations

Subpart C—Procedures

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d).

Subpart A—General

§ 30.1 Purpose and scope.

Unless provided for elsewhere in this title or under separate authority, this part implements HUD's civil money penalty provisions. The procedural rules for hearings under this part are set forth in 24 CFR part 26, subpart B.

§ 30.5 Effective dates.

(a) Under § 30.20, a civil money penalty may be imposed for violations occurring on or after May 22, 1991.

(b) Under §§ 30.25, 30.35, 30.45, 30.50, 30.55, and 30.60, a civil money penalty may be imposed for any violations that occur on or after December 15, 1989.

(c) Under § 30.30, a civil money penalty may be imposed with respect to any property transferred for use under section 810 of the Housing and Community Development Act of 1974, as amended (12 U.S.C. 1706e), after January 1, 1981, to a state, a unit of general local government, or a public agency or qualified community organization designated by a unit of general local government, or a transferee of any such entity.

(d) Under § 30.40, concerning loan guarantees for Indian housing, a civil money penalty may be imposed for violations occurring on or after October 28, 1992.

(e) Under § 30.65, a civil money penalty may be imposed for violations occurring on or after the following dates:

(1) September 6, 1996, for owners of more than four residential dwellings; or

(2) December 6, 1996, for owners of one to four residential dwellings.

§ 30.10 Definitions.

Since this part is primarily procedural, terms not defined in this section shall have the meanings given them in relevant program regulations. Comprehensive definitions are in 24 CFR part 4 (HUD Reform Act). The terms *ALJ, Department, HUD,* and *Secretary* are defined in 24 CFR part 5.

Agent. Any person, including an officer, director, partner, or trustee, who acts on behalf of another person.

Dealer. A seller, contractor or supplier of goods or services having a direct or indirect financial interest in the transaction between the borrower and the lender, and who assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender.

Knowing or *Knowingly.* Having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under subpart B of this part or under 24 CFR part 4.

Loan correspondent. A lender or loan correspondent as defined at § 202.2 of this title.

Material or *Materially.* In some significant respect or to some significant degree.

Person. An individual, corporation, company, association, authority, firm, partnership, society, State, local government or agency thereof, or any other organization or group of people.

Respondent. A person against whom a civil money penalty action is initiated.

§ 30.15 Application of other remedies.

A civil money penalty may be imposed in addition to other administrative sanctions or any other civil remedy or criminal penalty.

Subpart B—Violations

§ 30.20 Ethical violations by HUD employees.

(a) *General.* The General Counsel, or his or her designee, may initiate a civil money penalty action against HUD employees who improperly disclose information pursuant to section 103 of the HUD Reform Act of 1989 (42 U.S.C. 3537a(c)) and 24 CFR part 4, subpart B.

(b) *Maximum penalty.* The maximum penalty is $11,000 for each violation.

§ 30.25 Violations by applicants for assistance.

(a) *General.* The General Counsel, or his or her designee, may initiate a civil money penalty action against applicants for assistance, as defined in 24 CFR part 4, subpart A, who knowingly and materially violate the provisions of subsections (b) or (c) of section 102 of the HUD Reform Act of 1989 (42 U.S.C. 3545).

(b) *Maximum penalty.* The maximum penalty for each violation is $11,000.

§ 30.30 Urban Homestead violations.

(a) *General.* The Assistant Secretary for Community Planning and Development, or his or her designee, or the Director of the Office of Technical Assistance and Management may initiate a civil money penalty action against persons who knowingly and materially violate section 810 of the Housing and Community Development Act of 1974, as amended (12 U.S.C. 1706e), or the provisions of 24 CFR part 590, in the use or conveyance of property made available under the Urban Homestead Program.

(b) *Maximum penalty.* The maximum penalty is either twice the amount of the gross profit realized from any impermissible use or conveyance of the property, or the amount of section 810 funds used to reimburse HUD, the Department of Veterans Affairs, the Resolution Trust Corporation, or the Farmers Home Administration (or its successor agency under Public Law 103–354) for the property, whichever is greater. If the property is still held by the violator, the gross profit shall include any appreciation between the amount the violator paid for the property and its current value as determined by an independent, HUD-qualified appraiser.

§ 30.35 Mortgagees and lenders.

(a) *General.* The Mortgagee Review Board may initiate a civil money penalty action against any mortgagee or lender who knowingly and materially:

(1) Violates the provisions listed in 12 U.S.C. 1735f–14(b);

(2) Fails to comply with the requirements of § 201.27(a) of this title regarding approval and supervision of dealers;

(3) Approves a dealer that has been suspended, debarred, or otherwise denied participation in HUD's programs;

(4) Makes a payment that is prohibited under § 202.12(p) of this title;

(5) Fails to remit, or timely remit, mortgage insurance premiums, loan insurance charges, or late charges or interest penalties;

(6) Permits loan documents for an FHA insured loan to be signed in blank by its agents or any other party to the loan transaction unless expressly approved by the Secretary;

(7) Fails to follow the mortgage assignment procedures set forth in §§ 203.650 through 203.664 of this title or in §§ 207.255 through 207.258b of this title.

(8) Fails to timely submit documents that are complete and accurate in connection with a conveyance of property or a claim for insurance benefits, in accordance with §§ 203.365, 203.366, or 203.368 of this title;

(9) Fails to:

(i) Process requests for formal release of liability under an FHA insured mortgage;

(ii) Obtain a credit report, issued not more than 90 days prior to approval of a person as a borrower, as to the person's creditworthiness to assume an FHA insured mortgage;

(iii) Timely submit proper notification of a change in mortgagor or mortgagee as required by § 203.431 of this title;

(iv) Timely submit proper notification of mortgage insurance termination as required by § 203.318 of this title;

(v) Timely submit proper notification of a change in mortgage servicing as required by § 203.502 of this title; or

(vi) Report all delinquent mortgages to HUD, as required by § 203.332 of this title;

(10) Fails to service FHA insured mortgages, in accordance with the requirements of 24 CFR parts 201, 203, and 235;

(11) Fails to fund loans that it originated, or otherwise misuses loan proceeds;

(12) Fails to comply with the conditions relating to the assignment or pledge of mortgages;

(13) Fails to comply with the provisions of the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), or the Fair Housing Act (42 U.S.C. 3601 et seq.);

(14) Fails to comply with the terms of a settlement agreement with HUD.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is $5,500 for each violation, up to a limit of $1,100,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

§ 30.40 Loan guarantees for Indian housing.

(a) *General.* The Secretary may initiate a civil money penalty action against any mortgagee or holder of a guarantee certificate who knowingly and materially violates the provisions of 12 U.S.C. 1715z–13a(g)(2) concerning loan guarantees for Indian housing;

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is $5,000 for each violation, up to a limit of $1,100,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

§ 30.45 Multifamily and Section 202 mortgagors.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any mortgagor of property that includes five or more living units and is subject to a mortgage insured, coinsured, or held by the Secretary, who knowingly and materially commits a violation listed at 12 U.S.C. 1735f–15 (b) or (c), or 12 U.S.C. 1701q–1 (b) or (c).

(b) *Maximum penalty.* The maximum penalty for each violation of 12 U.S.C. 1735f–15(b) and 12 U.S.C. 1701q–1(b) is the amount of loss that the Secretary incurs at a foreclosure sale, or a sale after foreclosure, with respect to the property involved. The maximum penalty for each violation of 12 U.S.C. 1735f–15(c) and 12 U.S.C. 1701q–1(c) is $27,500.

§ 30.50 GNMA issuers and custodians.

(a) *General.* The President of GNMA, or his or her designee, may initiate a civil money penalty action against a GNMA issuer or custodian that knowingly and materially violates any provision of 12 U.S.C. 1723i(b), title III of the National Housing Act, or any implementing regulation, handbook, guaranty agreement, or contractual agreement, or participant letter issued by GNMA, or fails to comply with the terms of a settlement agreement with GNMA.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is $5,500 for each violation, up to a limit of $1,100,000 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.

§ 30.55 Interstate Land Sales violations.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any person who knowingly and materially violates any provision of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.); the rules and regulations set forth at 24 CFR parts 1710, 1715, and 1720; or any order issued thereunder.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Maximum penalty.* The maximum penalty is $1,100 for each violation, up to a limit for any particular person of $1,100,000 during any one-year period. Each violation shall constitute a separate violation as to each sale or lease or offer to sell or lease.

§ 30.60 Dealers or loan correspondents.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any dealer or loan correspondent who violates section 2(b)(7) of the National Housing Act (12 U.S.C. 1703). Such violations include, but are not limited to:

(1) Falsifying information on an application for dealer approval or reapproval submitted to a lender;

(2) Falsifying statements on a HUD credit application, improvement contract, note, security instrument, completion certificate, or other loan document;

(3) Failing to sign a credit application if the dealer or loan correspondent assisted the borrower in completing the application;

(4) Falsely certifying to a lender that the loan proceeds have been or will be spent on eligible improvements;

(5) Falsely certifying to a lender that the property improvements have been completed;

(6) Falsely certifying that a borrower has not been given or promised any cash payment, rebate, cash bonus, or anything of more than nominal value as an inducement to enter into a loan transaction;

(7) Making a false representation to a lender with respect to the creditworthiness of a borrower or the eligibility of the improvements for which a loan is sought.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is $5,500 for each violation, up to a limit for any particular person of $1,100,000 during any one-year period.

§ 30.65 Failure to disclose lead-based paint hazards.

(a) *General.* The Director of the Office of Lead Hazard Control, or his or her designee, may initiate a civil money penalty action against any person who knowingly violates 42 U.S.C. 4852d(b)(1).

(b) *Amount of penalty.* The maximum penalty is $11,000 for each violation.

Subpart C—Procedures

§ 30.70 Prepenalty notice.

Whenever HUD intends to seek a civil money penalty, the official designated in subpart B of this part, or his or her designee (or the chairperson of the Mortgagee Review Board, or his or her designee, in actions under § 30.35), shall issue a written notice to the respondent. This prepenalty notice shall include the following:

(a) That HUD is considering seeking a civil money penalty;

(b) The specific violations alleged;

(c) The maximum civil money penalty that may be imposed;

(d) The opportunity to reply in writing to the designated program official within 30 days after receipt of the notice; and

(e) That failure to respond within the 30-day period may result in issuance of a complaint under § 30.85 without consideration of any information that the respondent may wish to provide.

§ 30.75 Response to prepenalty notice.

The response shall be in a format prescribed in the prepenalty notice. The response shall include any arguments opposing the imposition of a civil money penalty that the respondent may wish to present.

§ 30.80 Factors in determining appropriateness and amount of civil money penalty.

In determining whether to seek a penalty, and the amount of such penalty, the officials designated in subpart B of this part shall consider the following factors:

(a) The gravity of the offense;

(b) Any history of prior offenses. For violations under §§ 30.25, 30.35, 30.45, 30.50, 30.55, and 30.60, offenses that occurred prior to December 15, 1989 may be considered;

(c) The ability to pay the penalty;

(d) The injury to the public;

(e) Any benefits received by the violator;

(f) The extent of potential benefit to other persons;

(g) Deterrence of future violations;

(h) The degree of the violator's culpability;

(i) With respect to Urban Homestead violations under § 30.30, the expenditures made by the violator in connection with any gross profit derived; and

(j) Such other matters as justice may require.

(k) In addition to the above factors, with respect to violations under §§ 30.45, 30.55, and 30.60, the Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, shall also consider:

(1) Any injury to tenants; and/or

(2) Any injury to lot owners.

§ 30.85 Complaint.

(a) *General.* Upon the expiration of the period for the respondent to submit a response to the prepenalty notice, the official designated in subpart B of this part, or his or her designee (or the Mortgagee Review Board in actions under § 30.35) shall determine whether to seek a civil money penalty. Such determination shall be based upon a review of the prepenalty notice, the response, if any, and the factors listed at § 30.80. A determination by the Mortgagee Review Board to seek a civil money penalty shall be by a majority vote of the Board.

(b) If a determination is made to seek a civil money penalty, the official or his or her designee, or the Mortgagee Review Board, shall issue a complaint to the respondent. The complaint shall state the following:

(1) The factual basis for the decision to seek a penalty;

(2) The applicable civil money penalty statute;

(3) The amount of penalty sought;

(4) The right to submit a response in writing, within 15 days of receipt of the complaint, requesting a hearing on any material fact in the complaint, or on the appropriateness of the penalty sought;

(5) The address to which a response must be sent;

(6) That the failure to submit a response may result in the imposition of the penalty in the amount sought.

(c) A copy of this part and of 24 CFR part 26, subpart B shall be included with the complaint.

(d) *Service of the complaint.* The complaint shall be served on the respondent by first class mail, personal delivery, or other means. In cases of violations by mortgagees and lenders of 12 U.S.C. 1735f–14(b) (1)(D) or (1)(F), or by GNMA issuers or custodians of 12 U.S.C. 1723i(b) (1)(G) or (1)(I), a copy of the complaint shall be provided to the Attorney General.

§ 30.90 Response to the complaint.

(a) *General.* The respondent may submit to HUD a written response to the complaint within 15 days of its receipt. The response shall be considered a request for a hearing. The response should include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the civil money penalty is not warranted or should be less than the amount sought in the complaint; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Chief Docket Clerk, Office of Administrative Law Judges, in accordance with § 26.37 of this title. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with § 26.39 of this title.

§ 30.95 Hearings.

Hearings under this part shall be conducted in accordance with the procedures at 24 CFR part 26, subpart B.

§ 30.100 Settlements.

The officials listed at subpart B of this part, or their designees (or the Mortgagee Review Board for violations under § 30.35), are authorized to enter into settlement agreements of civil money penalty claims. Settlement agreements may be executed at any time prior to the issuing of a notice of final determination under § 26.50 of this title, and may include sanctions for failure to comply with the terms of the agreement.

PART 81—REGULATIONS IMPLEMENTING THE AUTHORITY OF THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OVER THE CONDUCT OF THE SECONDARY MARKET OPERATIONS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA)

12. The authority citation for 24 CFR part 81 is revised to read as follows:

Authority: 12 U.S.C. 1451 *et seq.,* 1716–1723h, and 4501–4641; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601–3619.

§ 81.46 [Amended]

13. Section 81.46 is amended by revising the first sentence of paragraph (e)(1) to read as follows:

§ 81.46 Remedial actions.

* * * * *

(e) * * *

(1) Where a lender timely requests a hearing on a remedial action, a hearing shall be conducted before a HUD administrative law judge (ALJ) and a final decision rendered in accordance with the procedures set forth in 24 CFR part 26, subpart B, to the extent such provisions are not inconsistent with subpart C of this part or FHEFSSA. * * *

* * * * *

14. Section 81.82 is amended by revising the second sentence of paragraph (b)(2) to read as follows:

§ 81.82 Cease-and-desist proceedings.

* * * * *

(b) * * *

(2) *Administrative law judge.* * * * The hearing shall be conducted in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHEFSSA, with 24 CFR part 26, subpart B.

* * * * *

§ 81.83 [Amended]

15. Section 81.83 is amended as follows:

a. Paragraph (b)(2) is revised by removing the reference to ''$10,000'', and by adding in its place a reference to ''$11,000''; and

b. Paragraph (d)(3) is revised, to read as follows:

§ 81.83 Civil money penalties.

* * * * *

(d) * * *

(3) *Administrative law judge.* A HUD ALJ shall preside over any hearing conducted under this section, in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHEFSSA, with 24 CFR part 26, subpart B.

* * * * *

§ 81.84 [Amended]

16. Section 81.84 is amended by:

a. Revising paragraph (b)(2);

b. Revising paragraph (d);

c. Amending the third sentence of paragraph (h)(1) by removing the reference to ''§ 30.515'', and by adding in its place a reference to ''§ 26.38'';

d. Amending the first sentence of paragraph (j)(2) by removing the reference to ''§ 30.910'', and by adding in its place a reference to ''§ 26.51(c)''; and amending the second sentence of paragraph (j)(2) by removing the reference to ''§ 30.910(c) and (d)'', and by adding in its place a reference to ''§ 26.51(f)''; to read as follows:

§ 81.84 Hearings.

* * * * *

(b) * * *

(2) Hearings shall be conducted by a HUD ALJ authorized to conduct proceedings under 24 CFR part 26, subpart B.

* * * * *

(d) *Procedure.* Hearings shall be conducted in accordance with the procedures set forth in 24 CFR part 26, subpart B to the extent that such provisions are not inconsistent with any of the procedures in this part or FHEFSSA.

* * * * *

§ 81.85 [Amended]

17. Section 81.85 is amended by amending the third sentence of paragraph (c)(1) by removing the reference to ''§ 30.515'', and by adding in its place a reference to ''§ 26.38''.

PART 200—INTRODUCTION

20. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z-18; 42 U.S.C. 3535(d).

§ 200.243 [Amended]

21. In § 200.243, the second sentence of the introductory text of paragraph (a) is amended by adding the phrase '', subpart A'' after the phrase ''24 CFR part 26''.

PART 950—INDIAN HOUSING PROGRAMS

22. The authority citation for 24 CFR part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa-1437ee, and 3535(d).

§ 950.190 [Amended]

23. In § 950.190, the last sentence of paragraph (e) is amended by adding the phrase '', subpart A'' after the phrase ''24 CFR part 26''.

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

24. The authority citation for 24 CFR part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

§ 965.205 [Amended]

25. In § 965.205, the last sentence of paragraph (e) is amended by adding the phrase '', subpart A'' after the phrase ''24 CFR part 26''.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

26. The authority citation for 24 CFR part 3282 is revised to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 5424; and 42 U.S.C. 3535(d).

§ 3282.10 [Amended]

27. Section 3282.10 is amended by adding a new sentence at the end, to read as follows:

§ 3282.10 Civil and criminal penalties.

* * * The maximum amount of penalties imposed under section 611 of the Act shall be $1,100 for each violation, up to a maximum of $1,100,000 for any related series of violations occurring within one year from the date of the first violation.

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

28. The authority citation for 24 CFR part 3500 is revised to read as follows:

Authority: 12 U.S.C. 2601 et seq.; 28 U.S.C. 2461 note.

§ 3500.17 [Amended]

29. Section 3500.17 is amended as follows:

a. Paragraph (m) is revised to read as follows; and

b. Paragraphs (n)(1) and (n)(4)(iii) are amended by removing the phrase '', subpart E,''.

§ 3500.17 Escrow accounts.

* * * * *

(m) *Penalties.* (1) A servicer's failure to submit to a borrower an initial or annual escrow account statement meeting the requirements of this part shall constitute a violation of section 10(d) of RESPA (12 U.S.C. 2609(d)) and this section. For each such violation, the Secretary shall assess a civil penalty of 55 dollars ($55), except that the total of the assessed penalties shall not exceed $110,000 for any one servicer for violations that occur during any consecutive 12-month period.

(2) Violations described in paragraph (m)(1) of this section do not require any proof of intent. However, if a lender or servicer is shown to have intentionally disregarded the requirements that it submit the escrow account statement to the borrower, then the Secretary shall assess a civil penalty of $110 for each violation, with no limit on the total amount of the penalty.

* * * * *

Dated: September 19, 1996.

Henry G. Cisneros,

Secretary.

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Federal Register

Tuesday
September 24, 1996

Part VIII

The President

Proclamation 6920—Establishment of the Grand Staircase-Escalante National Monument

Federal Register
Vol. 61, No. 186
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Presidential Documents

Title 3—

The President

Proclamation 6920 of September 18, 1996

Establishment of the Grand Staircase-Escalante National Monument

By the President of the United States of America

A Proclamation

The Grand Staircase-Escalante National Monument's vast and austere landscape embraces a spectacular array of scientific and historic resources. This high, rugged, and remote region, where bold plateaus and multi-hued cliffs run for distances that defy human perspective, was the last place in the continental United States to be mapped. Even today, this unspoiled natural area remains a frontier, a quality that greatly enhances the monument's value for scientific study. The monument has a long and dignified human history: it is a place where one can see how nature shapes human endeavors in the American West, where distance and aridity have been pitted against our dreams and courage. The monument presents exemplary opportunities for geologists, paleontologists, archeologists, historians, and biologists.

The monument is a geologic treasure of clearly exposed stratigraphy and structures. The sedimentary rock layers are relatively undeformed and unobscured by vegetation, offering a clear view to understanding the processes of the earth's formation. A wide variety of formations, some in brilliant colors, have been exposed by millennia of erosion. The monument contains significant portions of a vast geologic stairway, named the Grand Staircase by pioneering geologist Clarence Dutton, which rises 5,500 feet to the rim of Bryce Canyon in an unbroken sequence of great cliffs and plateaus. The monument includes the rugged canyon country of the upper Paria Canyon system, major components of the White and Vermilion Cliffs and associated benches, and the Kaiparowits Plateau. That Plateau encompasses about 1,600 square miles of sedimentary rock and consists of successive south-to-north ascending plateaus or benches, deeply cut by steep-walled canyons. Naturally burning coal seams have scorched the tops of the Burning Hills brick-red. Another prominent geological feature of the plateau is the East Kaibab Monocline, known as the Cockscomb. The monument also includes the spectacular Circle Cliffs and part of the Waterpocket Fold, the inclusion of which completes the protection of this geologic feature begun with the establishment of Capitol Reef National Monument in 1938 (Proclamation No. 2246, 50 Stat. 1856). The monument holds many arches and natural bridges, including the 130-foot-high Escalante Natural Bridge, with a 100 foot span, and Grosvenor Arch, a rare ''double arch.'' The upper Escalante Canyons, in the northeastern reaches of the monument, are distinctive: in addition to several major arches and natural bridges, vivid geological features are laid bare in narrow, serpentine canyons, where erosion has exposed sandstone and shale deposits in shades of red, maroon, chocolate, tan, gray, and white. Such diverse objects make the monument outstanding for purposes of geologic study.

The monument includes world class paleontological sites. The Circle Cliffs reveal remarkable specimens of petrified wood, such as large unbroken logs exceeding 30 feet in length. The thickness, continuity and broad temporal distribution of the Kaiparowits Plateau's stratigraphy provide significant opportunities to study the paleontology of the late Cretaceous Era. Extremely significant fossils, including marine and brackish water mollusks, turtles, crocodilians, lizards, dinosaurs, fishes, and mammals, have been recovered

from the Dakota, Tropic Shale and Wahweap Formations, and the Tibbet Canyon, Smoky Hollow and John Henry members of the Straight Cliffs Formation. Within the monument, these formations have produced the only evidence in our hemisphere of terrestrial vertebrate fauna, including mammals, of the Cenomanian-Santonian ages. This sequence of rocks, including the overlaying Wahweap and Kaiparowits formations, contains one of the best and most continuous records of Late Cretaceous terrestrial life in the world.

Archeological inventories carried out to date show extensive use of places within the monument by ancient Native American cultures. The area was a contact point for the Anasazi and Fremont cultures, and the evidence of this mingling provides a significant opportunity for archeological study. The cultural resources discovered so far in the monument are outstanding in their variety of cultural affiliation, type and distribution. Hundreds of recorded sites include rock art panels, occupation sites, campsites and granaries. Many more undocumented sites that exist within the monument are of significant scientific and historic value worthy of preservation for future study.

The monument is rich in human history. In addition to occupations by the Anasazi and Fremont cultures, the area has been used by modern tribal groups, including the Southern Paiute and Navajo. John Wesley Powell's expedition did initial mapping and scientific field work in the area in 1872. Early Mormon pioneers left many historic objects, including trails, inscriptions, ghost towns such as the Old Paria townsite, rock houses, and cowboy line camps, and built and traversed the renowned Hole-in-the-Rock Trail as part of their epic colonization efforts. Sixty miles of the Trail lie within the monument, as does Dance Hall Rock, used by intrepid Mormon pioneers and now a National Historic Site.

Spanning five life zones from low-lying desert to coniferous forest, with scarce and scattered water sources, the monument is an outstanding biological resource. Remoteness, limited travel corridors and low visitation have all helped to preserve intact the monument's important ecological values. The blending of warm and cold desert floras, along with the high number of endemic species, place this area in the heart of perhaps the richest floristic region in the Intermountain West. It contains an abundance of unique, isolated communities such as hanging gardens, tinajas, and rock crevice, canyon bottom, and dunal pocket communities, which have provided refugia for many ancient plant species for millennia. Geologic uplift with minimal deformation and subsequent downcutting by streams have exposed large expanses of a variety of geologic strata, each with unique physical and chemical characteristics. These strata are the parent material for a spectacular array of unusual and diverse soils that support many different vegetative communities and numerous types of endemic plants and their pollinators. This presents an extraordinary opportunity to study plant speciation and community dynamics independent of climatic variables. The monument contains an extraordinary number of areas of relict vegetation, many of which have existed since the Pleistocene, where natural processes continue unaltered by man. These include relict grasslands, of which No Mans Mesa is an outstanding example, and pinon-juniper communities containing trees up to 1,400 years old. As witnesses to the past, these relict areas establish a baseline against which to measure changes in community dynamics and biogeochemical cycles in areas impacted by human activity. Most of the ecological communities contained in the monument have low resistance to, and slow recovery from, disturbance. Fragile cryptobiotic crusts, themselves of significant biological interest, play a critical role throughout the monument, stabilizing the highly erodible desert soils and providing nutrients to plants. An abundance of packrat middens provides insight into the vegetation and climate of the past 25,000 years and furnishes context for studies of evolution and climate change. The wildlife of the monument is characterized by a diversity of species. The monument varies greatly in elevation and topography and is in a climatic zone where northern and southern

habitat species intermingle. Mountain lion, bear, and desert bighorn sheep roam the monument. Over 200 species of birds, including bald eagles and peregrine falcons, are found within the area. Wildlife, including neotropical birds, concentrate around the Paria and Escalante Rivers and other riparian corridors within the monument.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Grand Staircase-Escalante National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the document entitled ''Grand Staircase-Escalante National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 1.7 million acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from entry, location, selection, sale, leasing, or other disposition under the public land laws, other than by exchange that furthers the protective purposes of the monument. Lands and interests in lands not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to diminish the responsibility and authority of the State of Utah for management of fish and wildlife, including regulation of hunting and fishing, on Federal lands within the monument.

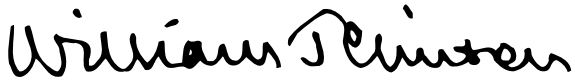
Nothing in this proclamation shall be deemed to affect existing permits or leases for, or levels of, livestock grazing on Federal lands within the monument; existing grazing uses shall continue to be governed by applicable laws and regulations other than this proclamation.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation. The Secretary of the Interior shall prepare, within 3 years of this date, a management plan for this monument, and shall promulgate such regulations for its management as he deems appropriate. This proclamation does not reserve water as a matter of Federal law. I direct the Secretary to address in the management plan the extent to which water is necessary for the proper care and management of the objects of this monument and the extent to which further action may be necessary pursuant to Federal or State law to assure the availability of water.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of September, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.



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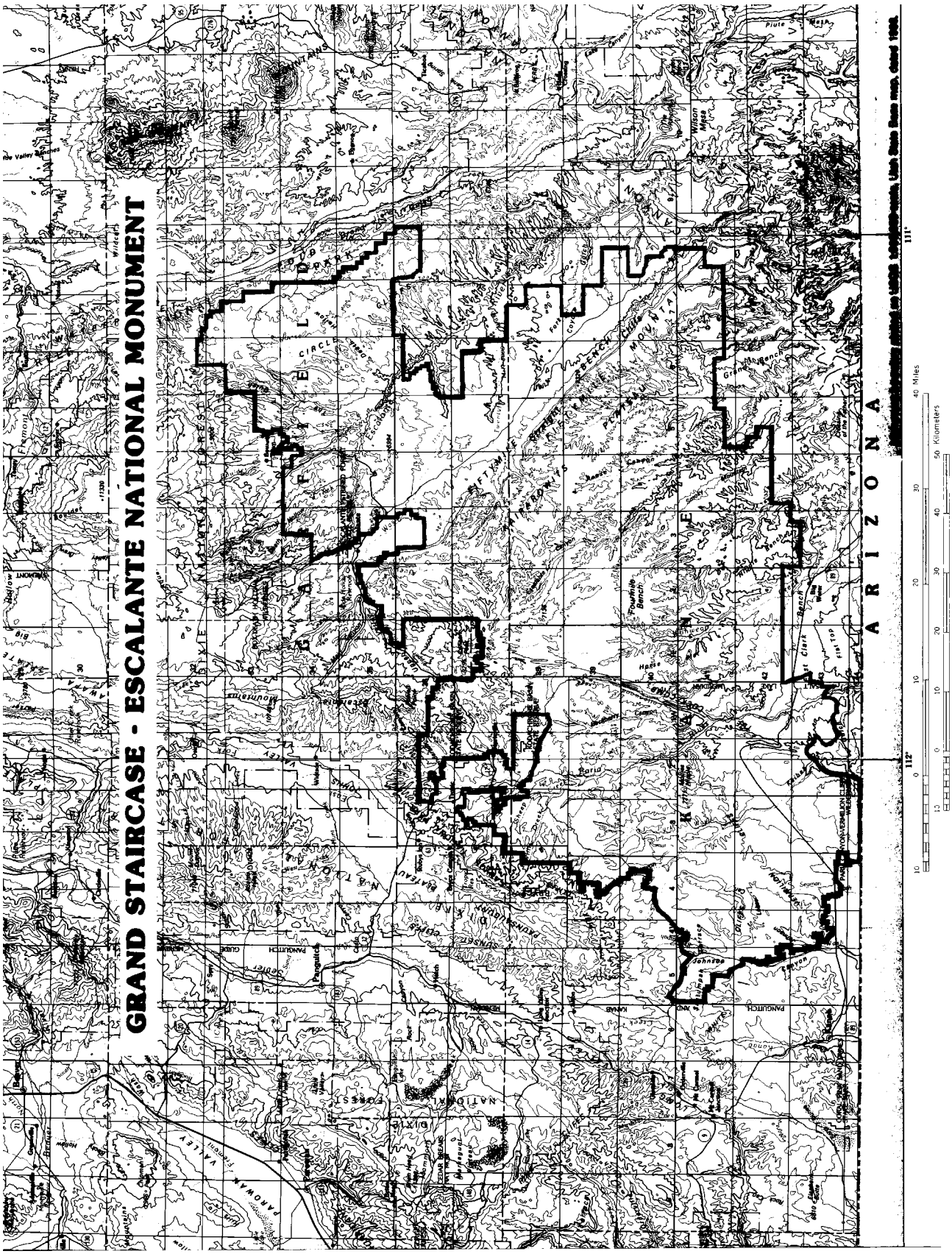

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Vol. 61, No. 186

Tuesday, September 24, 1996

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

46373–46528 3
46529–46698 4
46699–47018 5
47019–47408 6
47409–47660 9
47661–47798 10
47799–48062 11
48063–48398 12
48399–48600 13
48601–48814 16
48815–49044 17
49045–49236 18
49237–49406 19
49407–49648 20
49649–49938 23
49939–50228 24

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

2246 (see Proc. 6920) 50223
6915 48063
6916 48815
6917 49405
6918 49407
6919 49647
6920 50223

Executive Orders:

October 29, 1913 (Revoked in part PLO 7216) 48720
12865 (Continued by Notice of Sept. 16) 49047
12975 (Amended by EO 13018) 49045
13017 47659

Administrative Orders:

Memorandums:

August 30, 1996 46695

Presidential Determinations:

No. 96–15 of March 7, 1996 49935
No. 96–16 of March 7, 1996 49937
No. 96–42 of August 24, 1996 46699
No. 96–43 of August 27, 1996 46529
No. 96–50 of September 4, 1996 48601
No. 96–51 of September 4, 1996 48603
Notice of September 16, 1996 49047

4 CFR

Proposed Rules:

7 47240

5 CFR

317 46531
412 46531
532 ..... 47661, 48817, 49649
1201 49049
2635 48733

Proposed Rules:

316 47450
1312 48855

7 CFR

2 49237
12 47019
27 48399
52 ..... 48065, 48066
301 ..... 47662, 47663
319 47663
718 49049
906 49650
911 ..... 46701, 49050
915 ..... 46701, 49050
916 49651
917 49651
920 49653
930 49939
955 49952
981 49954
987 49955
1075 47038
1412 49049
1789 48605

Proposed Rules:

46 47674
271 47680
275 47680
457 ..... 46401, 48416, 48420, 48423, 49982
704 49697
906 49078
981 48428
998 47786
1001 49081
1002 49081
1004 49081
1005 49081
1006 49081
1007 49081
1011 49081
1012 49081
1013 49081
1030 49081
1032 49081
1033 49081
1036 49081
1040 49081
1044 49081
1046 49081
1049 49081
1050 49081
1064 49081
1065 49081
1068 49081
1075 49081
1076 49081
1079 ..... 46571, 49081
1106 49081
1124 49081
1126 49081
1131 49081
1134 49081
1135 49081
1137 ..... 47092, 49081
1138 49081
1139 49081
1160 47093
1410 49697
1780 48075

8 CFR

3 ..... 46373, 47550

36 CFR

1.....46554
7.....46379
15.....46554
111.....48572
211.....47673
223.....48625
242.....48625
701.....49261

Proposed Rules:

800.....48580

37 CFR

201.....49680

Proposed Rules:

1.....49820
2.....48872
3.....49820
5.....49820
7.....49820

38 CFR

4.....46720

Proposed Rules:

16.....47469

39 CFR

111.....48071

40 CFR

9.....48208
51.....49680
52 .....47055, 47057, 47058, 48407, 48409, 48629, 48632, 49087, 49090, 49262, 49413, 49414, 49682, 49685, 49688
60.....49974
63 .....46906, 48208, 49263
81.....47058
82.....47012
180.....48843
261.....46380, 48635
272.....49265
300 .....47060, 47825, 49690

Proposed Rules:

Ch. 1 48452
35.....46748
51.....47840, 49715
52 .....47099, 47100, 48453, 48656, 48657, 48873, 49064, 49285, 49426, 49716, 49717
59.....46410
60.....47840, 49987
61.....47840, 49091
63.....47840, 49091
64.....46418
70 .....46418, 49091, 49289
71.....46418
81.....47100
153.....49427
159.....49427
270.....46748
271.....46748
300 .....46418, 46749, 46753, 48657
437.....48806
799.....47853

41 CFR

Proposed Rules:

Ch. 109 48006
60–250.....50080

42 CFR

401.....49269
405.....49269
417.....46384
421.....49271
482.....47423

Proposed Rules:

418.....46579

43 CFR

4.....47434, 49976
2560.....47724, 49008

Proposed Rules:

36.....48873
2090.....47853
2110.....47853
2130.....47853
2200.....47855
2610.....47725
2780.....48454
5510.....48455
6400.....47726
8350.....47726

44 CFR

64.....46732

Proposed Rules:

61.....49717

45 CFR

2400.....46734

Proposed Rules:

1609.....48529

46 CFR

10.....47060
12.....47060
42.....49418
110.....49691
161.....49691

Proposed Rules:

10.....47786

47 CFR

1 .....46557, 48874, 49103
25.....46557
51.....47284
52.....47284
68.....47434
73 .....46563, 47434, 47435, 47436, 48638, 48639
80.....46563
95.....46563, 49103

Proposed Rules:

Ch. 1 46419
1 .....46420, 46603, 46755, 49066
22.....46420
25.....46420
69.....49987
73 .....46430, 46755, 47470, 47471, 47472, 48659, 48660
95.....4066

48 CFR

219.....49008
225.....49531
231.....49531
253.....49531
1506.....47064
1515.....47065
1534.....47064
1536.....47064
1542.....47064
1545.....47064
1552.....47064, 47065
1807.....47068
1808.....47068
1809.....47068
1810.....47068
1811.....47068
1812.....47068
1814.....47068
1828.....47068
1835.....47068
1842.....47068
1845.....47082
1852.....47068, 47082
1853.....47082
1871.....47068

Proposed Rules:

Ch. 34 47550
1 .....47390, 48354, 48380, 49402
2.....48380
3 .....47390, 48354, 49402
4 .....47390, 48354, 48532, 49402
5.....47384
6.....48354, 49402
8.....48354, 49402
9 .....47390, 48354, 49402
11.....47384
12 .....47384, 47390, 48354, 48532, 49402
13.....47384, 48532
14 .....47390, 48354, 48380, 49402
15.....47390, 48380
16 .....48354, 48532, 49402
19 .....47390, 48354, 49402
22.....48354, 49402
23.....48354, 49402
25.....48354, 49402
27.....48354, 49402
29.....48354, 49402
31 .....48354, 49402, 50114
32.....48354, 49402
33.....47390
36 .....48354, 48380, 49402
37 .....47390, 48354, 49402
41.....48532
42.....48354, 49402
43.....47390, 48532
45 .....48354, 49294, 49402
47.....48354, 49402
49 .....48354, 48532, 49402
52 .....47384, 47390, 47798, 48354, 48380, 48532, 49294, 49402
53 .....47390, 48354, 48380, 48532, 49402
203.....47100
212.....47101
215.....47100
219.....47101
225.....47101
226.....47101
227.....47101
233.....47101
252.....47100, 47101
501.....46607
504.....46607
507.....46607
510.....46607
511.....46607
512.....46607
514.....46607
515.....46607
538.....46607
539.....46607
543.....46607
546.....46607
552.....46607
570.....46607
9903.....49196

49 CFR

538.....46740
571 .....47086, 49691, 49976
575.....47437, 47825
583.....46385
1002.....48639
1039.....47446

Proposed Rules:

171.....49723
172.....49723
173.....49723
174.....49723
175.....49723
176.....49723
177.....49723
178.....49723
179.....49723
180.....49723
531.....46756
571 .....47728, 49427, 49992
572.....49992

50 CFR

14.....49979
17.....48412
20.....49231, 49638
32.....46390
100.....48625
285.....48413, 48640
622 .....47446, 47821, 48413, 48641, 48848
648.....47827, 49276
660 .....47089, 48072, 48643, 48852
662.....48853
679 .....46399, 46570, 47089, 48073, 48074, 48415, 49076, 49418, 49696, 49980

Proposed Rules:

17 .....46430, 46608, 47105, 47856, 48875, 48876
20.....47786
21.....46431
285.....48661, 48876
630.....48661
648 .....47106, 47472, 47473, 49428, 49430
649.....49430
679 .....47108, 48113, 49294

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Federal regulatory reform--

Alaska; fisheries of Exclusive Economic Zone; correction and clarification; published 9-24-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Contingent fee representation; published 7-26-96

Contractor responsibility determinations; use of commercial sources of supplier information; published 7-26-96

Cost-effective value engineering procedures and processes; published 7-26-96

Disaster Relief Act activities; published 7-26-96

Indian-owned economic enterprises; subcontracting costs recovery; published 7-26-96

Patent use without authorization; General Agreement on Tariffs and Trade (GATT); published 7-26-96

Performance and payment bonds; published 7-26-96

Personal services compensation costs; published 7-26-96

Termination inventory schedules; published 7-26-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Importation, exportation, and transportation of wildlife:

Miscellaneous amendments

Correction; published 9-24-96

INTERIOR DEPARTMENT

Hearings and Appeals Office, Interior Department

Organization, functions, and authority delegations:

Miscellaneous amendments; published 9-24-96

JUSTICE DEPARTMENT

Justice Programs Office

Grants:

Indian Tribes program; violent offender incarceration and truth-in-sentencing; published 9-24-96

JUSTICE DEPARTMENT

Grants:

Police Corps program; published 9-24-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contingent fee representation; published 7-26-96

Contractor responsibility determinations; use of commercial sources of supplier information; published 7-26-96

Cost-effective value engineering procedures and processes; published 7-26-96

Disaster Relief Act activities; published 7-26-96

Indian-owned economic enterprises; subcontracting costs recovery; published 7-26-96

Patent use without authorization; General Agreement on Tariffs and Trade (GATT); published 7-26-96

Performance and payment bonds; published 7-26-96

Personal services compensation costs; published 7-26-96

Termination inventory schedules; published 7-26-96

TRANSPORTATION DEPARTMENT

Coast Guard

Lifesaving equipment:

Recreational inflatable personal flotation device standards; published 3-28-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Beech; published 8-20-96

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Debt instruments modifications; published 6-26-96

Correction; published 9-11-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Limes grown in Florida and imported; comments due by 10-4-96; published 8-5-96

Oranges, grapefruit, tangerines, and tangelos grown in Florida

Grade standards; comments due by 10-1-96; published 8-2-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Horses from Mexico; quarantine requirements; comments due by 9-30-96; published 7-31-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Cotton crop; comments due by 10-3-96; published 9-3-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Bering Sea and Aleutian Islands groundfish; comments due by 10-3-96; published 8-22-96

Caribbean, Gulf of Mexico, and South Atlantic reef fish; comments due by 10-3-96; published 8-21-96

Gulf of Mexico reef fish; comments due by 10-3-96; published 8-19-96

West Coast salmon; comments due by 9-30-96; published 9-17-96

DEFENSE DEPARTMENT

Acquisition regulations:

Comprehensive small business subcontracting plans; test program for negotiation; comments due by 9-30-96; published 7-31-96

Federal Acquisition Regulation (FAR):

Competitive range determinations; comments due by 9-30-96; published 7-31-96

Service contracting; comments due by 9-30-96; published 8-1-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Volatile organic compound (VOC) emissions--

Architectural coatings; correction; comments due by 9-30-96; published 9-3-96

Air quality implementation plans; approval and promulgation; various States:

Michigan; comments due by 9-30-96; published 8-30-96

Wisconsin; comments due by 9-30-96; published 8-29-96

Clean Air Act:

State operating permits programs--

California; comments due by 9-30-96; published 8-29-96

California; comments due by 9-30-96; published 8-29-96

Superfund program:

National oil and hazardous substances contingency plan--

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle content labeling; passenger cars and light vehicles; domestic and foreign content information; comments due by 10-3-96; published 9-3-96

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

Denatured alcohol and rum formulas; comments due by 9-30-96; published 7-31-96

Distilled spirits, wine, and beer; importation; comments due by 10-4-96; published 8-5-96

VETERANS AFFAIRS DEPARTMENT

Work-study services performance; debt reduction; comments due by 10-4-96; published 8-5-96